No. 18-966

IN THE

Supreme Court of the United States

DEPARTMENT OF COMMERCE, ET AL.,
Petitioners,

—v.—

STATE OF NEW YORK, ET AL.,
Respondents.

ON WRIT OF CERTIORARI BEFORE JUDGMENT
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JOINT APPENDIX
(VOLUME 3)

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 1:18-cv-05025-JMF

NEW YORK IMMIGRATION COALITION, CASA DE MARYLAND, AMERICAN-ARAB ANTI- DISCRIMINATION COMMITTEE, ADC RESEARCH INSTITUTE, and MAKE THE ROAD NEW YORK,

Plaintiffs,

—v.—

UNITED STATES DEPARTMENT OF COMMERCE; and WILBUR L. ROSS, JR., in his official capacity as Secretary of Commerce, and

BUREAU OF THE CENSUS, an agency within the United States Department of Commerce; and RON S. JARMIN, in his capacity as performing the non-exclusive functions and duties of the Director of the U.S. Census Bureau,

Defendants.

DECLARATION OF DANIEL ALTSCHULER

Daniel Altschuler, pursuant to the provisions of 28 U.S.C. § 1746, declares under penalty of perjury as follows:

1. I am the Director of Civic Engagement and Research for Plaintiff Make the Road New York ("MRNY"). In that capacity, I am responsible in part for community organizing, communications, and research for MRNY, including MRNY's education, outreach, and research efforts around the 2020 Decennial Census in the communities MRNY serves. I have been on staff at MRNY since September 2011. I am also an Assistant Adjunct Professor of Public Service at New York University Wagner School of Public Service. I hold a doctorate in Politics and a master's degree in Development Studies from Oxford University where I studied as a Rhodes Scholar.

2. MRNY is a nonprofit membership organization with offices and service centers in Brooklyn, Queens, Staten Island, Suffolk County, and White Plains.

3. MRNY's mission is to build the power of immigrant and working-class communities. To do that, MRNY engages in four core strategies: Legal and Survival Services, Transformative Education, Community Organizing and Policy Innovation.

4. MRNY has more than 23,000 members who reside in New York City, Nassau County, Suffolk County, and Westchester County. These members lead multiple organizing committees across numerous issues and program areas of concern to

the organization. Members take on leadership roles in the campaigns, determine priorities, and elect the representatives who comprise most of the Board of Directors.

5. MRNY members in New York City and Nassau, Suffolk, and Westchester Counties rely on a number of facilities and services the funding for which is allocated based on the data generated by Decennial Census. These facilities and services include parents with children enrolled in schools that receive funding under Title I of the Elementary and Secondary Education Act; families whose children benefit from insurance funded by the State Children's Health Insurance Program; drivers who use interstate highways and mass transit on a daily basis and thus depend on federal highway funds to perform their jobs; and people who rely on housing assistance through various funding provided under Section 8, among other Census-guided funding streams.

6. The Decennial Census is a critical and constitutionally-mandated data-gathering instrument, used to distribute hundreds of billions of dollars in federal resources and to apportion political power at the federal, state, and local levels. The importance of a complete and accurate Decennial Census is significant and requires a direct inquiry of every person in the United States.

7. Because a complete and accurate Census count is critical to ensuring that our members receive the government funding and full political representation to which they are entitled, MRNY has an ongoing commitment to promoting

engagement in the Decennial Census among its members and constituents. In the months leading up to and during the 2010 Census, MRNY conducted outreach and engagement work with the immigrant community in its region concerning census participation. That work consisted of educating constituents about the Decennial Census and its importance to the community—in particular, that the population count under the Census partially determines the level of governmental funding for programs our members rely on and the amount of political representation our members receive at the federal, state, and local levels.

8. During the 2010 Census, MRNY was part of a coalition of organizations participating in an initiative titled, "Yes We Count," designed to improve the completeness and accuracy of the count in the New York City area. Like other groups in the coalition, MRNY was responsible for conducting outreach in specific geographic areas. MRNY created educational materials to be distributed to community members and hired people to conduct door-to-door canvassing at thousands of homes. MRNY also operated a series of workshops for the public, as well as for canvassers and community leaders, aimed at educating New York City residents about the purpose and uses of the Census as well as the importance of responding to the Census. MRNY expended approximately $150,000 and more than one thousand personnel hours on its census education and outreach efforts for the 2010 Census.

9. MRNY has been and remains committed to Census education and outreach work in part because MRNY understands that immigrants and communities of color have been consistently and routinely undercounted by the Census. From our work in the community, we understand that one reason that immigrants and communities of color have been undercounted is a fear of contact with the government and distrust of government officials.

10. This level of fear and distrust of government among immigrants and communities of color we serve has been exacerbated by the Trump Administration and its officials' hostility to these communities. Among the racist and xenophobic acts that the Trump Administration has undertaken include banning individuals from six majority Arab and/or Muslim countries from entering the United States; rescinding the Deferred Action for Childhood Arrivals program, which allowed 800,000 individuals—90% of whom are Latino—brought to this country as children to legally reside and work in the United States; rescinding Temporary Protected Status programs for individuals from El Salvador, Honduras, Nicaragua, Haiti, and Nepal; calling for an end to the diversity visa lottery; dramatically increasing interior enforcement raids in communities across the United States; and proposing to end family-based immigration, which would disproportionately harm immigrants from Latin America and Asia. MRNY and its members have consistently fought these efforts to intimidate and

marginalize immigrants of color in the courts, in the streets, and at the ballot box.

11. Now, New York immigrant communities' heightened fear of interacting with government workers has increased even further due to the decision to add the citizenship question. The citizenship question creates an incremental obstacle to Census participation because it ties the fear of immigrant communities of color directly to the Decennial Census instrument. By adding a citizenship question to the Decennial Census, the Trump Administration has taken advantage of a unique opportunity to bring their campaign to intimidate and marginalize immigrants into the home of every immigrant. The citizenship question threatens to put all immigrant respondents, as well as their families and neighbors, in a bind: Identify your disfavored status to a hostile administration or risk the loss of critical federal resources and political representation. For an administration that has found myriad ways to threaten and disparage immigrants, the citizenship question presents a singularly intrusive and effective method of attacking immigrants—one that has generated an incremental and heightened fear for immigrant communities of color.

12. For the 2020 Census, MRNY once again is participating in outreach and education work and is seeking outside funding to help support this work. This work includes, among other activities, general education programs, workshops for members, and door-to-door outreach. MRNY is already facing a much more challenging

environment for conducting outreach and encouraging immigrants of color to respond to the 2020 Census than the 2010 Census because of our members and constituents' heightened fear of interacting with government workers as a result of the Trump Administration's persistently hostile and discriminatory actions and attitudes towards immigrants of color.

13. This fear has already been exacerbated by the Administration's efforts to add a citizenship question and will be further exacerbated if the citizenship question is included in the 2020 Census. This fear is not unique to undocumented immigrants or non-citizens with documented legal status, but also to family and household members of non-citizens, who have expressed concern that participating in the Census that includes a citizenship question would invade their privacy and expose their family, friends, and neighborhoods to profiling by the law enforcement agencies of an administration hostile to immigrants of color. MRNY has confirmed from conversations with several of its members that some of them would be fearful of responding to the Census questionnaire if the citizenship question is added.

14. For example, at a MRNY event in Manhattan in June 2018, a MRNY member—a Latino noncitizen—told me that she would be afraid to open the door for a government official asking about citizenship status and expressed reluctance to respond to the Census if it included a citizenship question.

15. For another example, in May 2018, at one of MRNY's offices in Brooklyn, a DACA recipient who lives in a household that includes both undocumented persons and persons with documented legal status told me that he was afraid to answer the Census out of fear of subjecting households or other households on their block to profiling by immigration authorities.

16. For a third example, in June 2018, an MRNY member who is a naturalized United States citizen and resident of Long Island told me said that she would be less likely to respond to the Census if it included a citizenship question because she is fearful of the consequences of answering the question for non-citizens in her neighborhood.

17. Additionally, I am aware of at least three other individuals that have expressed fear about answering the Census survey if the citizenship question is on it: a 48 year-old non-citizen MRNY member of Honduran origin who lives in Brooklyn; a 30 year-old woman of Ecuadorian origin with DACA status who resides in Suffolk County and comes from a mixed status family; and a 54 year-old woman of Salvadoran origin who is a United States citizen and resides in Suffolk County with her mixed status family.

18. These members have communicated fears that the addition of the citizenship question would give a hostile administration information about the number of citizens and non-citizens on a neighborhood basis, or even on a city block basis. These members have expressed that this impending loss of privacy about this deeply personal citizenship information about

themselves, their loved ones, and their neighbors has caused emotional stress and fear. In particular, members are concerned that this citizenship information will be made public such that it can be viewed and potentially used for law enforcement profiling against people on blocks with high levels of noncitizens by agencies like Immigrations and Customs Enforcement or other parts of the Trump Administration that have been used to intimidate and marginalize immigrants.

19. MRNY's increased investment in Census education, research, and outreach, has been driven in part by concerns about the citizenship question expressed by these and other members and the immigrant communities we serve. Because of the information we have received concerning the heightened fear and suspicion created by the citizenship question among our members and the communities we serve, MRNY has begun its 2020 Census outreach earlier than initially anticipated. MRNY will be forced to expend more resources than initially anticipated to try to reduce the negative effect of this question on the response rate in the immigrant communities of color it serves. MRNY expects that it will need to interact with its constituents multiple times to answer questions and try to convince them to participate in the 2020 census. MRNY expects that it will need to spend more resources to reach the same number of people and that ultimately it will be less successful in convincing its constituents to participate in the 2020 Census than in 2010 due in large part to the presence of the citizenship question. MRNY

anticipates expending at least double the amount on 2020 Census education and outreach that the organization spent on its efforts to encourage participation in the 2010 Census.

20. To date, far more than a year out from the Census, MRNY has already created a bilingual, two-page informational sheet for educational purposes, and our communications team has spent several hours creating and sharing social media content to educate the public and encourage them to submit public comments on the citizenship question. MRNY's research team has also spent approximately 30 hours researching the impact of an undercount towards the purpose of informing our communications and outreach efforts to our members on about 2020 Decennial Census. Additionally, MRNY has organized nearly 30 organizations statewide—and subsequently nearly twenty organizations on Long Island—to sign onto letters rejecting the proposed citizenship question and to release a joint media statement once the question was formally recommended. MRNY has also convened multiple strategy meetings—one in person on Long Island with about twelve groups and one by phone with about five groups—to educate people about the citizenship question and begin plans to organize against it. MRNY has already started to offer presentations and workshops in the communities that it serves regarding the 2020 Census. And MRNY has been preparing educational materials and training its staff members to provide education regarding the purpose of the Census and the importance of responding, and also to conduct outreach,

particularly to Spanish-speaking audiences, to encourage the communities we serve to participate in the census.

21. Looking forward to future efforts as the Census nears, MRNY is preparing all of our offices and service centers to provide Census education and outreach through the direct education, health, and legal services that we provide. MRNY is also planning a door-to-door canvassing operation on an even greater scale than in 2010. Because of the need to increase the time and money spent on Census outreach due to the addition of the citizenship question, MRNY will need to divert resources from other areas critical to its mission including civic engagement and community organizing on other issues. MRNY has already diverted resources from other areas in order to address concerns from its constituents stemming from the announcement of the citizenship question, including voter registration and voter engagement, which are mission-critical programs during the Spring and Summer of an election year.

22. MRNY has also already diverted resources with regard to its participation in this lawsuit. The legal director and at least two staff attorneys remain updated consistently on litigation efforts, communicate with named members in this suit and executive staff, and coordinate internally about the suit. The legal director has spent approximately ten hours drafting declarations, communicating with the litigation team, drafting educational materials, fielding questions from the organization, and communicating with individual

MRNY members about the litigation. I have personally spent at least 50 hours on Census-related work that I otherwise would have spent on other civic engagement areas of work, such as voter registration and voter education.

23. Beyond the increased fear MRNY members face due to the Trump Administration's invasion of their privacy, these members also face significant negative consequences in the event of an undercount. MRNY members reside in New York City, Westchester, Nassau, and Suffolk Counties, the populations of which include immigrant communities of color that far exceed state and national averages. An undercount of those populations will deprive MRNY members of political influence and Census-guided funding to which they would be entitled by a more accurate count.

24. MRNY members in New York City and Nassau, Suffolk, and Westchester Counties rely on a number of facilities and services the funding for which is allocated based on the data generated by Decennial Census. These facilities and services include parents with children enrolled in schools that receive funding under Title I of the Elementary and Secondary Education Act; families whose children benefit from insurance funded by the State Children's Health Insurance Program; drivers who use interstate highways and mass transit on a daily basis and thus depend on federal highway funds to perform their jobs; and people who rely on housing assistance through various funding provided under Section 8, among other Census-guided funding streams.

25. One MRNY member who will suffer injury due to the addition of a citizenship question is Julissa Bisono. I am aware that Ms. Bisono is a resident of Queens County. I am aware that Ms. Bisono is a parent with a child attending a public school in Community School District 27 that receives Title I funding.

26. Another MRNY member who will suffer injury due to the addition of a citizenship question is Diana Zarumeno. I am aware that Ms. Zarumeno is a resident of Queens County. I am aware that Ms. Zarumeno is a parent with a child attending a public school in Community School District 24 that receives Title I funding.

27. Another MRNY member who will suffer injury due to the addition of a citizenship question is Maria Hernandez. I am aware that Ms. Hernandez is a resident of Kings County. I am aware that Ms. Hernandez is a parent with a child attending a public school in Community School District 32 that receives Title I funding.

28. Another MRNY member who will suffer injury due to the addition of a citizenship question is Lorena Mendez. I am aware that Ms. Mendez is a resident of Kings County. I am aware that Ms. Mendez is a parent with a child attending a Head Start program in Community School District 32.

29. Another MRNY member who will suffer injury due to the addition of a citizenship question is Perla Lopez. I am aware that Ms. Lopez is a resident of Queens County, New York. Because the number of Latino and immigrant residents of Queens County far exceeds the New York state

average, an undercount of Latino and immigrant residents of Queens County will cause Ms. Lopez and other MRNY members in Queens to be deprived of political power and funding that will instead go to other areas of New York State.

30. Another MRNY member who will suffer injury due to the addition of a citizenship question is Yatziri Tovar. I am aware that Ms. Tovar is a resident of Bronx County, New York. Because the number of Latino and immigrant residents of Bronx County far exceeds the New York state average, an undercount of Latino and immigrant residents of Bronx County will cause Ms. Tovar and other MRNY members in Queens to be deprived of political power and funding that will instead go to other areas of New York State.

I, Daniel Altschuler, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and recollection.

Dated: Brooklyn, New York

October 26, 2018

/s/
Daniel Altschuler

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 1:18-cv-02921-JMF

STATE OF NEW YORK, et al.,

Plaintiffs,

NEW YORK IMMIGRATION COALITION, et al.,

Consolidated Plaintiffs,

—v.—

UNITED STATES DEPARTMENT OF COMMERCE, et al.,

Defendants.

SUPPLEMENTAL DECLARATION OF DANIEL ALTSCHULER

I, Daniel Altschuler, pursuant to the provisions of 28 U.S.C. § 1746, declare under penalty of perjury that the foregoing is true and correct:

1. As explained in my October 26, 2018 Declaration, I am the Director of Civic Engagement and Research for Plaintiff Make the Road

New York ("MRNY"). In that capacity, I am responsible in part for community organizing, communications, and research for MRNY, including MRNY's education, outreach, and research efforts around the 2020 Census in the communities MRNY serves. I have been on staff at MRNY since September 2011. Throughout my tenure with MRNY, I have been in regular contact with MRNY members and I frequently meet with members in the communities in which they reside where I learn about their neighborhoods, their needs, and their concerns to inform communications, organizing, and civic engagement programs for MRNY.

2. All of the statements made in my October 26 Declaration and in this Declaration are made based on my personal knowledge, acquired after more than seven years on staff at MRNY. During that time period, I have familiarized myself with MRNY' s internal records and processes; our staff and their responsibilities; our programs and program areas; and our members, and their needs.

3. As Director of Civic Engagement and Research for MRNY, I have spent significant time traveling around the region that MRNY serves, meeting with the immigrant communities that we serve. Through this process, I have familiarized myself with prevailing views in these community concerning a number of issues, including the Trump Administration's treatment of immigrant communities and immigration-related policies, and fears in immigrant communities about the policies of this Administration. As part of this process, I have gained knowledge about the

prevailing feeling of fear among immigrant communities in the region that MRNY serves concerning the Trump Administration and, specifically, the decision to add a citizenship question to the 2020 Census and potential use of the information gleaned from this question.

4. My statements concerning the fears of members of the immigrant communities in the region that MRNY serves concerning the citizenship question and its effect on their willingness to participate in the Census therefore reflect my knowledge as a staff member at MRNY and an organizer in these communities, rather than a restatement of any particular individual's views. Similarly, in expressing my views about the likely effect of the citizenship question on these immigrant communities, I do not intend to offer any specific predictions about non-response rate or percentage undercount, but only my observations based on my knowledge as a community organizer and my work as Director of Civic Engagement and Research for MRNY.

5. I have also been extensively and personally involved in the research, development, and implementation of MRNY's 2020 Census education and outreach programs. In developing MRNY's education and outreach programs for the 2020 Census cycle, I have researched and become familiar with MRNY's education and outreach efforts during the 2010 Census cycle. To develop programs that achieve MRNY's goals of encouraging greater Census participation in the communities we serve, I have researched and gained familiarity with the importance of data

gathered from the Census in apportioning political representation and the allocation of some government funding sources. In 2012 and 2013, I helped lead advocacy efforts based in Long Island around redistricting at the state and county level and in the course of those efforts, I gained extensive familiarity with the role of Census data in political apportionment. Because MRNY's purpose is to serve the needs of our members and build power among immigrant and working-class communities, I have researched our members' concerns around the Census and how the communities we serve would be impacted by an undercount toward the end of designing communications and organizing strategies that address those concerns and increase their civic engagement.

6. Regarding statements I made in Paragraph 5 of my October 26 Declaration about the facilities and services that immigrant communities in New York City and Nassau, Suffolk, and Westchester Counties rely on, these statements are based on my work in the research and development of MRNY's civic engagement communications and programming around the 2020 Decennial Census. As a part of my job, I conducted research on the programs that our members and the communities we serve use where the funding levels are based on Census data in order to improve the efficacy of MRNY's communications and organizing on these issues.

7. Regarding statements I made in Paragraph 8 of my October 26 Declaration regarding MRNY' s Census education and outreach efforts during

the 2010 Census, these statements are based on my work in the research and development of programs for increasing Census participation among our members and constituents. Preparing MRNY's education and outreach work for the upcoming 2020 Census is a significant part of my job and to prepare for that work, I have researched MRNY's prior Census efforts in 2010 to gain an understanding of what our budget and staffing needs will be the 2020 cycle.

8. Regarding statements I made in Paragraph 11 of my October 26 Declaration that immigrant communities' heightened fear in interacting with government workers has increased even further due to the decision to add the citizenship question, these statements are based on my work as an organizer in immigrant communities and through the research I conduct to inform the development of our civic engagement programming, including our 2020 Census education and outreach programs. In my position, I stay informed of the policies that affect the immigrant communities we serve and, in my role as an organizer for MRNY, I am able to observe the impact of those policies on our constituents. In the course of researching and developing MRNY's civic engagement programming around the Census, including spending extensive time with our members, I have observed the increased fear and distrust of government arising out of the citizenship question.

9. Regarding a separate statement in Paragraph 11 of my October 26 Declaration, I do not intend to make any definitive statements about the actions of the Trump Administration

with regard to the citizenship question. Instead, I simply wish to assert—based on my Census work and my interactions with many members of immigrant communities in New York—that the citizenship question has proven to be a uniquely threatening policy proposal because of how intrusive the question is and how it affects every single immigrant.

10. Regarding statements I made in Paragraph 12 of my October 26 Declaration that MRNY is facing a more challenging environment for our Census outreach efforts in 2020 than the organization faced in 2010, those statements are based the research I have performed in the course of developing our communications and civic engagement programs around the 2020 Census. As one of the leaders of MRNY's Census efforts, I have already begun organizing and coordinating our educational and outreach efforts in our members' communities. To improve on our past efforts and make informed budgetary, hiring, and other decisions, I have informed myself of MRNY's past Census efforts to make sure we are adequately prepared. In the course of my research as well as my extensive organizing activities, I have learned that the climate of fear around the 2020 Census that I have observed during my recent organizing work in immigrant communities is unprecedented.

11. Based in part on what we have learned about this heightened fear surrounding the citizenship question in the communities we serve, MRNY has decided to expend more resources on 2020 Census education and outreach efforts. The statements I made in Paragraphs 13 through 18 of

my October 26 Declaration about heightened fear in immigrant communities, these statements are the result of my extensive contact with MRNY members and their families, many of whom are part of mixed-status households, in the course of my role as a community organizer. During meetings with members, I have observed the significant fear that some of our members face due to the Trump Administration's decision to add a citizenship question, including their consistent use of emphatic language and raised tones of voice when discussing these issues. The fear and confusion I have learned about through conversations like those referenced in Paragraphs 13-18 of my October 26 Declaration and other research regarding the impact of the citizenship question have informed MRNY's decisions to increase our education and outreach efforts around the 2020 Census to our members and the immigrant communities we serve.

12. Regarding a statement about my work at MRNY expressed in Paragraph 22 of my October 26 Declaration, my reference to the additional 50 hours of Census-related work I have done is a direct result of the inclusion of the citizenship question and the more challenging environment it has created in our members' communities. Without the inclusion of the citizenship question, I would have spent these hours devoted to other core areas of my work, in particular voter education, voter registration, and voter mobilization.

13. Regarding statements I made in Paragraph 23 of my October 26 Declaration concerning the negative consequences that our members will face

in the event of an undercount, my statements about the effect of any undercount of immigrant communities is based on my participation and supervision of the research and development of MRNY's Census education and outreach programs, as well as my work on redistricting, through which I have gained an understanding of the role of Census data in the apportionment of political representation and the allocation of government funding.

14. Regarding statements I made in Paragraph 24 of my October 26 Declaration concerning the facilities and services that immigrant communities in New York City and Nassau, Suffolk, and Westchester Counties rely on, these statements are based on my research and development of MRNY's civic engagement and communications activities around the 2020 Census. As a part of my research to inform MRNY's Census communications to members and the public, I have investigated the programs on which our members and their communities rely—particularly as I have focused more of my efforts on MRNY's 2020 education and outreach work. As part of my extensive engagement with members and their families as well as my research to inform MRNY's communications and civic engagement programs, including a report I research and wrote regarding overcrowding in public schools serving immigrant communities in New York City, I have gained an understanding that many of our members with children send their children to public schools in districts that receive Title I funding.

15. Regarding statements I made in Paragraph 25 of my October 26 Declaration concerning MRNY member Julissa Bisono, I know that Ms. Bisono is a member of MRNY, a resident of Queens, and has a child attending a public school that receives Title I funding because I know Ms. Bisono and her children personally and have worked extensively and directly with Ms. Bisono, who supervises MRNY' s education organizing team, on a report regarding public school overcrowding that specifically addressed the public school district in which I know her children attend public school.

16. Regarding statements I made in Paragraph 26 of my October 26 Declaration concerning MRNY member Diana Zarumeno, I know Ms. Zarumeno and the fact her child attends a Title I school through working extensively and directly with Ms. Zarumeno in her capacity as a parent leader and in the process of working with her on a report regarding public school overcrowding in Queens that featured her and her concerns about her child's public school.

17. Regarding statements I made in Paragraph 27 of my October 26 Declaration concerning MRNY member Maria Hernandez, I have become aware that Ms. Hernandez is a member of MRNY, that she is a resident of Kings County, and that she has a child attending a public school that receives Title I funding through MRNY's parent and education organizing programs. As part of the organizing function of my role as Director of Civic Engagement and Research, I regularly interact

with our parent and education organizing team and the members they work with.

18. Regarding statements I made in Paragraph 28 of my October 26 Declaration concerning MRNY member Lorena Mendez, I have become aware that Ms. Mendez is a member of MRNY, that she is a resident of Kings County, and that she has a child attending a public school that receives Title I funding through MRNY's parent and education organizing programs. As part of the organizing function of my role as Director of Civic Engagement and Research, I regularly interact with our parent and education organizing team and the members they work with.

19. Regarding statements I made in Paragraph 29 of my October 26 Declaration concerning MRNY member Perla Lopez, I have known and worked regularly with Ms. Lopez for years and I know Ms. Lopez is a member of MRNY and a resident of Queens County, New York. I am aware of the demographics of Queens County through research I have conducted in developing MRNY's census education and outreach efforts as well as other civic engagement programming.

20. Regarding statements I made in Paragraph 30 of my October 26 Declaration concerning MRNY member Yatziri Tovar, I have known and worked regularly with Ms. Tovar for years and I know Ms. Tovar is a member of MRNY and a resident of Bronx County, New York. I am aware of the demographics of Bronx County through research I have conducted in developing MRNY' s census education and outreach efforts as well as other civic engagement programming.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: November 2, 2018

New York, NY

/s/
Daniel Altschuler

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 1:18-cv-2921 (JMF)

STATE OF NEW YORK, et al.,

Plaintiffs,

—v.—

UNITED STATES DEPARTMENT OF COMMERCE, et al.,

Defendants.

AFFIDAVIT OF TODD A. BREITBART

Pursuant to 28 U.S.C. § 1746(2), I, Todd A. Breitbart, hereby declare as follows:

1. I am over the age of eighteen and have personal knowledge of all the facts stated herein.

2. I directed the staff work on redistricting, with the title of Sr. Research Analyst, for successive Minority (Democratic) Leaders of the New York State Senate from 1980 until my retirement in 2005. I was the principal consultant to the Committee on Election Law of the Bar

Association of the City of New York in the development of its 2007 report on reform of the New York State redistricting process, and I drafted the text of the report. As a member of the Minority Leader's staff, I marshalled the evidence for plaintiffs challenging the Senate districts enacted in 1992 (*Dixon v. Cuomo*, consolidated on appeal with *Wolpoff v. Cuomo*, 80 N.Y.2d 70 (1992)) and 2002 (*Rodriguez v. Pataki*, 308 F.Supp.2d 346 (2004)). Independently of my former employers, I submitted extensive oral and written testimony to the NYS Legislative Task Force on Reapportionment (LATFOR) during the 2012 redistricting round, including proposed plans of Senate districts. I was the principal witness, as a fact witness, for the plaintiffs challenging the Senate redistricting in subsequent litigation (*Cohen v. Cuomo*, 19 N.Y.3d 196 (2012), in which I was also a plaintiff, and the later stages of *Favors v. Cuomo*, 39 F. Supp. 3d 276 (2014)). I am the co-author of the chapter on redistricting (Chap. 4) in P. Galie, C. Bopst, and G. Benjamin, eds., *New York's Broken Constitution* (State University of NY Press, 2016).

3. Beginning with the Constitution of 1821, New York State had excluded aliens from the population basis for legislative apportionment. Under the Constitution adopted in 1894, provisions in Article III §4 continued this practice.

4. In 1969, the voters approved an amendment adding §5-a to Article III, requiring that legislative redistricting in New York be based on the whole number of persons, including non-citizens. Although the citizen-population

provisions in Article III §4 have not been deleted, they are negated by §5-a. Legislative redistricting in New York has since been based on the whole number of persons as reported in the decennial census. These reports are now known as the PL94-171 redistricting data set (a reference to the statute, enacted in 1975, that makes available to the states what is now known as the Voting District Project). There is no other source for a count of the whole number of persons at the block level. New York State would not have the resources or expertise to substitute its own efforts for those of the Census Bureau.

5. In the PL94-171 redistricting data set from Census 2010, New York has 350,169 census blocks, including: 242,807 with a non-zero population; 52,976 with a population of one to 10 persons; 142,857 with a population of 11 to 100; 26,404 with a population of 101 to 200; and 20,570 with a population exceeding 200.

6. As of 2012, New York State was required to obtain preclearance from the Department of Justice or from a three-judge federal court in the District of Columbia, under §5 of the Voting Rights Act, for any change affecting voting – including redistricting plans – affecting three counties: Bronx, Kings, and New York. The purpose of this requirement was to ensure that any such redistricting plan would not reduce the electoral power of minority groups in those counties. New York State's 2012 preclearance submission to the Department of Justice, including all data and documents submitted, is available on the LATFOR website, under the heading "DOJ

Submission", at the following address: http://latfor.state.ny.us/justice2012/. The submission offers no citizenship data in support of the application for preclearance. Although the Justice Department's procedures for administration of Section 5 of the Voting Rights Act provided that the Department could request additional information if necessary to determine if the preclearance standard had been met, 28 C.F.R. 51.37, there is no indication that the Department of Justice asked for any additional data before granting preclearance.

7. The constitutional amendment approved by New York voters in 2014 provides for an 'Independent Redistricting Commission' that is to hold hearings and recommend congressional and legislative redistricting plans to the Legislature. The principal provisions governing the appointment and function of the 'Independent Redistricting Commission' are to be found in Article III, §§4 and 5-b. The Commission does not yet exist, and its members must be appointed by February 1, 2020. Since that is rather a late date for the Commission to begin assembling a staff and working on databases, it will presumably depend heavily on the work of LATFOR staff. If the Legislature chooses to reject the Commission's recommendation and "draw its own lines" (see *Lieb v. Walsh*, N.Y. Supreme Court, Albany, 2014, slip. op. 24262, at 6), LATFOR will presumably provide the Legislature with the technical resources to craft the districts.

8. By causing an underreporting of the non-citizen population, the proposed citizenship

question will impair the constitutionally protected right of ***minority-group voting-age citizens*** to be represented in Congress equally with all other persons in their respective states of residence. In other words, among other likely harms, it will impair the right to representation of precisely those persons whose right to congressional and legislative representation would supposedly be protected by better enforcement of §2 of the Voting Rights Act.

9. In states to which more than one congressional seat is apportioned, the districts must be as nearly equal in population as possible. There is no *de minimis* population deviation, even the smallest population deviation must be justified, and any avoidable population deviation impairs the right to representation of all persons in the overpopulated districts (*see Wesberry v. Sanders*, 376 U.S. 1, 7-8 (1964); *Karcher v. Daggett*, 462 U.S. 725, 734 (1983); *Evenwel v. Abbott*, 136 S. Ct., 1120, 1124 (2016): "States must draw congressional districts with populations as close to perfect equality as possible."). Although the current New York congressional districts, which have a maximum population deviation of one person, were imposed by a district court (*see Favors v. Cuomo*, 2012 US Dist LEXIS 36910, at *6 (E.D.N.Y. Mar. 19, 2012)), not enacted by the Legislature, the Legislature previously adhered to the same strict standard when it fulfilled its obligation to enact congressional districts in 1992 and 2002 (the two previous post-*Karcher* redistrictings). New York is not exceptional. After the 2010 census, according to the National Conference of State Legislatures in a study

available at http://www.ncsl.org/research/redistricting/2010-ncsl-redistricting-deviation-table.aspx, 30 of the 43 states with more than one representative adopted congressional redistricting plans with maximum population deviations of no more than one person.

10. Data from the American Community Survey 2012-16 five-year estimates shows that there is a strong tendency for minority-group voting-age citizens to be concentrated in the same congressional districts as non-citizens. In New York State, the five congressional districts in which non-citizens constitute the highest percentages of the total population are, in descending order: CD 14 (population 25.11% non-citizen), where 68.40% of the citizens of voting-age are members of minority groups; CD 6 (population 21.20% non-citizen), where 55.73% of the citizens of voting-age are members of minority groups; CD 15 (population 21.08% non-citizen), where 96.58% of the citizens of voting-age are members of minority groups; CD 7 (population 20.04% non-citizen), where 64.80% of the citizens of voting-age are members of minority groups; and CD 13 (population 19.23% non-citizen), where 82.74% of the citizens of voting age are members of minority groups. In contrast, the five congressional districts in which non-citizens constitute the lowest percentages of the total population are, in ascending order: CD 27 (population 1.34% non-citizen), where 6.49% of the citizens of voting-age are members of minority groups; CD 21 (population 1.59% non-citizen), where 8.23% of the citizens of voting-age are members of minority groups; CD 23 (population 2.22% non-citizen), where 8.51% of the

citizens of voting-age are members of minority groups; CD 22 (population 2.33% non-citizen), where 8.82% of the citizens of voting-age are members of minority groups; and CD 24 (population 2.70% non-citizen), where 13.28% of the citizens of voting age are members of minority groups. A differential undercount of non-citizens, and of citizens who share a household – and a census return – with non-citizens, will therefore cause congressional districts with a high percentage of minority-group citizens of voting age to have a larger population than the PL94-171 data would seem to indicate. If congressional districts are created with equal *reported* populations, the districts with a high percentage of minority-group citizens of voting age will have a larger *actual* total population than districts with a relatively small non-citizen population and a relatively small percentage of minority-group citizens of voting age.

11. Although I have focused the preceding discussion on minority-group citizens of voting-age – the citizens whose rights to representation would presumably be protected by better enforcement of VRA §2 – all persons residing in the *actually* overpopulated districts would suffer an impairment of their constitutional right to congressional representation equal to that enjoyed by other residents of the same states. It should also be noted that if congressional districts have equal populations as *reported* in the decennial census, this impairment would not depend on varying partisan or procedural factors. It would occur if congressional redistricting were dominated by Democrats, Republicans, or neither party, and

if the congressional districts were devised by a legislature, a commission of whatever sort, or a special master appointed by a District Court.

12. A differential undercount of non-citizens and of citizens who share a household with non-citizens will also harm those regions within a state, such as New York City, where a disproportionate share of the state's non-citizen population resides. In the total population estimates associated by the Census Bureau with the 2012-16 five-year ACS estimates, New York State has a total population of 19,697,457, and New York City has a total population of 8,461,961 — 42.96% of the state total. New York State is estimated to have a non-citizen population of 2,020,397, and New York City is estimated to have a non-citizen population of 1,438,215. Thus, non-citizens are estimated to constitute 10.26% of the state population, 17.00% of the New York City population, and 5.18% of the total population of the 57 counties outside of New York City. Put another way, New York City, with 42.96% of the total state population, has 71.18% of the non-citizen population, while the other 57 Counties, with 57.04% of the total state population, have 28.82% of the non-citizen population. Consequently, if inclusion of a citizenship question in the decennial census discourages participation by non-citizens and those with whom they share a household, the people of New York City as a whole will be disadvantaged in relation to other residents of the state in the apportionment of congressional and legislative districts, and in any distribution of funds that depends on the count of total population.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

Executed on this 26th of October, 2018

/s/
Todd A. Breitbart

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 18-CV-2921-JMF
Hon. Jesse M. Furman

NEW YORK IMMIGRATION COALITION, *et. al*,
Plaintiff,

—v.—

UNITED STATES DEPARTMENT
OF COMMERCE, *et. al*,
Defendant.

AMENDED DECLARATION OF JOHN H. THOMPSON

1. I, John H. Thompson, pursuant to the provisions of 28 U.S.C. § 1746, declare under penalty of perjury as follows:

2. I submit this declaration in lieu of direct expert testimony in the trial in the above captioned cased.

I. Qualifications

3. I have both a Bachelor's Degree and a Master's Degree in Mathematics from Virginia Polytechnic Institute and State University. Additionally, I completed graduate coursework in statistics at George Washington University.

4. I served as the Director of the United States Census Bureau from August 2013 to June 2017. The Director of the Census Bureau is appointed by the President and confirmed by the Senate.

5. My responsibilities as Director of the Census Bureau included overseeing the research and testing program for improving the 2020 Decennial Census questions on Race and Ethnicity.

6. Prior to becoming Director, I worked at the Census Bureau for 27 years. I started my career as a mathematical statistician in 1975. I spent the majority of my employment at the Census Bureau focused on the Decennial Census. I ultimately served as the Associate Director for the 2000 Decennial Census. In this position I was the senior career executive with management responsibility for all aspects of the 2000 Decennial Census. I was also chairman and director of the Executive Steering Committee for Accuracy and Coverage Evaluation Policy for the 2000 Census.

7. My work as Associate Director included collaboration with the Office of Management and Budget on the extensive research and testing program that lead to the inclusion of a new race question on the 2000 Census questionnaire.

8. In addition to my experience at the Census Bureau, I am also a distinguished professional in the area of statistics and survey design. After serving as the Associate Director for the 2000 Decennial Census I was the Executive Vice President and then President at NORC at the University of Chicago ("NORC"). NORC is an objective, non-partisan independent research institution that delivers reliable data and rigorous analysis to guide critical programmatic, business, and policy decisions. NORC's clients include government, corporate, and nonprofit organizations. NORC's services include designing and conducting surveys (telephone, Internet, and in-person) as well as analytical studies. At NORC, my responsibilities encompassed the management of all survey operations including the design and testing of survey questionnaires.

9. After my term as Director of the Census Bureau ended in June 2017 I served as the Executive Director of the Council of Professional Associations on Federal Statistics ("COPAFS"). COPAFS is a membership organization made up of professional associations and research organizations that depend on and support high quality federal statistics. The Executive Director of COPAFS must have a deep understanding of the Federal Statistical System and the wide range of data products that are produced. Serving as the Executive Director of COPAFS reinforced my appreciation of the importance of high quality Decennial Census data to the entire Federal Statistical System. I retired as Executive Director in August of this year.

10. In addition to my extensive work experience, I am an elected Fellow of the American Statistical Association, and was selected to serve on the National Academies of Science, Engineering, and Medicine Committee on National Statistics.

11. A copy of the expert report that I submitted in this case is **PX-311**.

II. Summary of Opinions

12. I was asked by Plaintiffs to review the administrative record upon which the Secretary of Commerce Wilbur Ross based his decision to add a question concerning citizenship on the 2020 Decennial Census, the depositions of Dr. Ron Jarmin and Dr. John Abowd, the Census Bureau research paper *Understanding the Quality of Alternative Citizenship Data Sources for the 2020 Census* by Brown et al. and the March 26, 2018 memorandum by Secretary Ross documenting his decision to include a question on citizenship on the 2020 Decennial Census questionnaire.

13. It is my opinion to that there is no evidence in the administrative record or any of the other documents that I reviewed that the Census Bureau conducted any of the proper testing that should be done in order to determine the effects of including a citizenship question on a Decennial Census before the decision was made to add such a question to the 2020 Decennial Census.

14. I have also concluded that the Census Bureau has not conducted any of the proper testing that would allow one to conclude that Census non-response follow up procedures will effectively address the increase in nonresponse

rates that will be caused by the addition of the citizenship question.

15. It is also my opinion that the administrative record indicates that Secretary Ross failed to consider the likelihood that the citizenship question will increase the undercount and ignored the advice of the Census Bureau that citizenship data would best be provided by using other means than including a question on citizenship on the 2020 Decennial Census questionnaire.

III. Census Operations

16. The U.S. Constitution requires the federal government to conduct a Decennial Census counting the total number of "persons"—regardless of citizenship status—residing in each state.

17. Through the Census Act, Congress has assigned the responsibility of making this enumeration to the Secretary of Commerce, and created the Census Bureau within the Department of Commerce to spearhead this effort. 13 U.S.C. §§ 2, 4, 5, 141(a). The central constitutional purpose of the Census Bureau in taking the Decennial Census is to conduct an accurate enumeration of the population.

18. To enable a person-by-person count, the Census Bureau's goal is to mail a questionnaire, or an invitation to respond to the questionnaire via the internet, to every housing unit in the United States, and to then implement additional procedures to count the population

* * *

42. The data collected by the ACS allows the Census Bureau to produce estimates of Citizen Voting Age Population (CVAP). CVAP data based on responses to the ACS are reported by the Census Bureau down to the census block group level.

V. Protocols for Proper Research and Testing of a Question Proposed for Inclusion on the Decennial Census

43. Inaccuracies or undercounts in Decennial Census data will result in under-representation of the affected population groups not just in the immediate term, but for ten subsequent years until the next Decennial Census results are available.

44. It is a widely accepted principle among statisticians and survey methodologists that even minor changes in question wording or placement on a questionnaire can have unanticipated effects on both response rates and the accuracy of the data respondents provide.

45. Given the importance of the Decennial Census, the Census Bureau has established extensive testing processes in order to properly assess proposed changes to the content of the questionnaire and avoid the risk of introducing undercounts or other inaccuracies into the census data.

46. It is my opinion that the decision to add a question on citizenship to the 2020 Decennial Census questionnaire was a deviation from these well-established principles for developing a Decennial Census questionnaire.

47. Two examples of the extensive research and testing that is standard practice when the Census Bureau considers making changes to the Decennial Census questionnaire took place during my tenure overseeing the 2000 and 2020 Decennial Censuses. These two extensive multi-year testing programs are reflective of the great care which the Census Bureau determined was necessary to ensure that both the 2000 and 2020 Census results would not be influenced by unanticipated biases or undercounts due to changes in the questionnaires relating to race and ethnicity.

48. Following the 1990 Decennial Census there was a proposal to revise the questionnaire to allow respondents to indicate that they identified with multiple races. In response, the Office of Management and Budget announced in July 1993 that it would undertake a comprehensive review of the current categories for data on race and ethnicity in all Federal Data collections. The review was conducted over four years and included extensive cognitive and field testing conducted by the Census Bureau. This review also included the development and extensive testing of a question to be included on the 2000 Decennial Census questionnaire.

49. Similarly, planning for the 2020 Decennial Census also included an extensive research and testing program to determine how the questions on race and ethnicity could be improved. This research started more than ten years prior to the 2020 Decennial Census when the design of the Alternate Questionnaire Experiment for the 2010 Decennial Census began in 2008. This testing

involved three components: 1) a questionnaire sent by mail that respondents received in lieu of the standard 2010 Decennial Census questionnaire; 2) a telephone re-interview of the mail respondents to assess the accuracy and the reliability of both the control and the alternative race and Hispanic origin questions; and 3) a series of focus groups conducted to complement the quantitative analyses. Because the results of the Alternate Questionnaire Experiment were promising but not conclusive additional testing was conducted following the 2010 Decennial Census.

50. Throughout 2014 and 2015, the Census Bureau shared their plans for testing different question designs, and participated in numerous public dialogues in order to obtain community feedback.

51. In 2015 the proposed changes to the questionnaire were extensively tested through the National Content Test ("NCT"). The NCT examined several key ways to try to improve the data on race and ethnicity. This included question format (e.g. whether to ask separate questions on race and ethnicity or to combine them), response categories (e.g. whether to include a "Middle Eastern or North African" category), instruction wording (e.g. comparing two sets of instructions: "Mark [X] one or more boxes" vs. "Mark all that apply" in paper data collections; and "Select one or more boxes" vs. "Select all that apply" in Internet data collections) and question terminology (e.g. whether to include "race," "origin," "ethnicity," or no terms).

52. The 2015 NCT was conducted with a nationally representative sample of 1.2 million housing units in the United States, including Puerto Rico. This sample was designed to ensure that the results accurately reflected the nation as a whole, across a variety of demographic characteristics. To ensure a representative sample, the NCT oversampled census tracts that contained relatively high percentages of race and ethnicity groups who were likely to have lower self-response rates.

53. Following the initial NCT sampling a re-interview was conducted with approximately 75,000 respondents to confirm how effective the initial questionnaire had been. This re-interview asked three questions about how respondents self-identify their race and ethnicity, and collected more detailed information about respondents' racial and ethnic background.

54. Despite all of this extensive testing and research, in January 2018 Albert Fontenot, the Associate Director for Decennial Census Programs announced that the Census Bureau would continue to use two separate questions for collecting data on race and ethnicity and would not add a separate Middle Eastern or North African category on the 2020 Census. The stated justification was that although extensive testing had been conducted for over a decade, a final decision had to be made by December 31, 2017 in order to allow the Census Bureau adequate time to deliver the final question wording for the 2020 Decennial Census to Congress by March 31, 2018

55. Despite the extensive testing conducted in order to test potential new questions for the 2000

and 2020 Census there is no evidence in the administrative record that any similar testing supported the decision to include a citizenship question on the 2020 Census.

56. Based on my extensive experience at the Census Bureau and at NORC, I will now describe the components of a research and testing program that I believe should be carried out to determine whether or not a proposed new question should be included on a Decennial Census.

57. First, the Census Bureau should determine whether the proposed question needs to be included on the Decennial Census. This process should begin when a federal agency identifies a need for new information that can only be collected from the Decennial Census and thus makes a formal request to the Census Bureau to consider adding a new question. The request would come in response to a formal solicitation from the Census Bureau or when an agency identifies a new need for data.

58. Upon receiving the request, the Census Bureau should work with the Office of Management and Budget and with the Department of Commerce Office of General Counsel to determine whether this information should be collected from the Decennial Census questionnaire. The three key components of this review are: (1) confirming the legislative basis for the information need; (2) ensuring that the information is needed from every person in the United States such that it cannot be obtained from some other source such as the American Community Survey; and (3)

confirming that there is no other source for the requested information.

* * *

be discussed with officials at the Department of Commerce with oversight responsibilities including the Secretary of Commerce.

89. The administrative record documents that the Census Bureau conducted timely and well-thought out research on how to best produce data on citizenship to meet the Department of Justice's request. This research showed that there were more cost effective and more accurate methods to produce these data by using administrative records instead of asking the question directly on the 2020 Census questionnaire

90. Additionally, speaking for the Census Bureau, Dr. Abowd testified in his deposition that he does not agree with the concluding passage of Secretary Ross's decision memorandum that the addition of the citizenship question "is necessary to provide complete and accurate data in response to the DOJ request." J. Abowd 30(b)(6) Dep. Tr., dated Aug. 29, 2018, at 331:8-17.

91. The Census Bureau provided these recommendations to Secretary Ross, but they were not adopted and the administrative record does not include a rationale for Ross ignoring them.

92. In my experience, it is unprecedented for a senior Department of Commerce official to dismiss a Census Bureau technical recommendation based on extensive research without documenting a rationale for such an action.

93. In his March 26, 2018 decision memorandum Secretary Ross stated that "the citizenship question has been well tested." However, the administrative record does contain any documentation of a research testing program that would be appropriate for supporting the inclusion of the citizenship question on the 2020 Decennial Census questionnaire. In fact, the administrative record demonstrates that Secretary Ross made his decision to add a new question in the absence of any results from cognitive testing, field testing or other research on the potential effects of including the question on the 2020 Decennial Census questionnaire.

* * *

PX-260

[COVER]

Reissued Jul 2013

U.S. Census Bureau Statistical Quality Standards

[IMAGE]

The leading source of quality data about the nation's people and economy.

United States
Census Bureau

Preface[1]

1. Introduction

Purpose

This document specifies the statistical quality standards for the U.S. Census Bureau. As the largest statistical agency of the federal government, the Census Bureau strives to serve as the leading source of quality data about the nation's people and economy. The Census Bureau has developed these standards to promote quality in its information products and the processes that generate them. These standards provide a means to ensure consistency in the processes of all the Census Bureau's program areas, from planning through dissemination. By following these standards, the Census Bureau's employees and contractors will ensure the utility, objectivity, and integrity of the statistical information provided by the Census Bureau to Congress, to federal policy makers, to sponsors, and to the public.

Background

In 2002, the United States Office of Management and Budget (OMB) issued Information Quality Guidelines (OMB, *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies*, February 22, 2002, 67 FR 8452-8460), directing all federal agencies to develop their own information quality guidelines. In October 2002,

[1] Please note that this document contains some Intranet links that are accessible only within the U.S. Census Bureau.

the Census Bureau issued its information quality guidelines (U.S. Census Bureau, *U.S. Census Bureau Section 515 Information Quality Guidelines*, 2002). These guidelines established a standard of quality for the Census Bureau and incorporated the information quality guidelines of the OMB and the Department of Commerce, the Census Bureau's parent agency.

Following the OMB's information quality guidelines, the Census Bureau defines information quality as an encompassing term comprising utility, objectivity, and integrity. Our definition of information quality is the foundation for these standards.

> *Utility* refers to the usefulness of the information for its intended users. We assess the usefulness of our information products from the perspective of policy makers, subject matter users, researchers, and the public. We achieve utility by continual assessment of customers' information needs, anticipation of emerging requirements, and development of new products and services.
>
> - The statistical quality standards related to utility include: Planning a Data Program (A1), Developing Data Collection Instruments and Supporting Materials (A2), Developing and Implementing a Sample Design (A3), Acquiring and Using Administrative Records (B2), Reviewing Information Products (E3), Releasing Information Products (F1), and Providing Documentation to Support Transparency in Information Products (F2).

Objectivity focuses on whether information is accurate, reliable, and unbiased, and is presented in an accurate, clear, complete, and unbiased manner. Objectivity involves both the contion of the information. It requires complete, accurate, and easily understood documentation of the sources of the information, with a description of the sources of errors that may affect the quality of the data, when appropriate.

- The statistical quality standards related to objectivity include: Developing Data Collection Instruments and Supporting Materials (A2), Developing and Implementing a Sample Design (A3), Establishing and Implementing Data Collection Methods (B1), Acquiring and Using Administrative Records (B2), Capturing Data (C1), Editing and Imputing Data (C2), Coding Data (C3), Linking Data from Multiple Sources (C4), Producing Direct Estimates from Samples (D1), Producing Estimates from Models (D2), Producing Measures and Indicators of Nonsampling Error (D3), Analyzing Data (E1), Reporting Results (E2), Reviewing Information Products (E3), Releasing Information Products (F1), Providing Documentation to Support Transparency in Information Products (F2), Addressing Information Quality Complaints (F3), and Managing Data and Documents (S2).

Integrity refers to the security of information – protection of the information from unauthorized access or revision, to ensure that the information is not compromised through

corruption or falsification. Several federal statutes and Census Bureau policies govern the protection of information, most notably Title 13 and Title 26.

- Protecting Confidentiality (S1) directly addresses issues concerning the integrity of the data. All the statistical quality standards contain requirements for protecting information from unauthorized access or release.

In September 2006, the OMB issued *Standards and Guidelines for Statistical Surveys*, which specify requirements for federal statistical agencies to ensure that their information products satisfy the information quality guidelines. The OMB standards are not intended to describe all the efforts that an agency may undertake to ensure the quality of its information. These Census Bureau statistical quality standards provide additional guidance that focuses on the Census Bureau's statistical programs and activities and that addresses the Census Bureau's unique methodological and operational issues.

2. Scope

The Census Bureau's statistical quality standards apply to all information products released by the Census Bureau and the activities that generate those products, including products released to the public, sponsors, joint partners, or other customers. All Census Bureau employees and Special Sworn Status individuals must comply with these standards; this includes contractors and other individuals who receive Census Bureau funding to

develop and release Census Bureau information products.

The Census Bureau often conducts data collections and performs associated work for sponsoring agencies on a reimbursable basis. The work performed by the Census Bureau under such contracts is in the scope of these statistical quality standards, whether performed under Title 13, Title 15, or another authorization. If a sponsor's requirements or funding constraints result in noncompliance with these standards, the Census Bureau's manager for the program must obtain a waiver, except where noted in the standards.

For the purposes of these standards, information products include printed, electronic, or digital formats (e.g., Web, CD, DVD, and tape) of: news releases; Census Bureau publications; working papers (including technical papers or reports); professional papers (including journal articles, book chapters, conference papers, poster sessions, and written discussant comments); abstracts; research reports used to guide decisions about Census Bureau programs; public presentations at external events (e.g., seminars or conferences); handouts for presentations; tabulations and custom tabulations; public-use data files; statistical graphs, figures, and maps; and the documentation disseminated with these information products.

Exclusions to the Scope

None of the following exclusions apply to Statistical Quality Standard S1, *Protecting Confidentiality*, or the requirements for protecting confidentiality in the individual standards.

These standards do not apply to:

- Information products intended for internal Census Bureau use that are not intended for public dissemination.
- Information products delivered to agencies within the Department of Commerce for their internal use.
- Internal procedural or policy manuals prepared for the management of the Census Bureau and the Department of Commerce that are not intended for public dissemination.
- Information products that result from the Census Bureau's administrative or management processes.
- Information products released in response to a Freedom of Information Act request.
- Documents intended only for communications between agencies, within agencies, or with individuals outside the Census Bureau if the documents contain no data and do not discuss analyses or methodological information.
- Informal communications between Census Bureau employees and colleagues in other organizations that do not disseminate Census Bureau data or results based on Census Bureau data.
- Information products delivered to sponsors or oversight agencies, including the Congress, relating to the management of Census Bureau programs.
- Information products authored by external researchers at the Census Bureau's Research Data Centers.
- Information products that use Census Bureau data and are authored by Special Sworn Status individuals employed by other

federal agencies or organizations for their agencies (e.g., SSA, GAO, and CBO).

- Information products generated by other agencies or organizations to which the Census Bureau has given only technical assistance or training. However, Census Bureau staff providing such assistance should consider these standards as guidelines.
- Information products developed from surveys intended to measure Census Bureau customers' or users' satisfaction with Census Bureau products or to measure Census Bureau employees' job satisfaction. However, any public release of results of such surveys must explain that they do not meet the Census Bureau's statistical quality standards because the respondents are self-selected and may not be representative of all customers, all users, or all employees.
- Communications released via social media. Social media must not be used to disseminate data or statistical analyses not previously cleared for external release. Such communications must follow the Census Bureau's *Policies and Procedures Governing the Use of Social Media*.

The scope statements of the individual standards provide additional information to clarify the scope and to list exclusions specific to each standard.

3. Responsibilities

All Census Bureau employees and Special Sworn Status individuals are responsible for following the Census Bureau's statistical quality standards

in their work to develop, deliver, and release information products.

Responsibilities of the Program Areas and the Supporting Directorates and Divisions

Divisions and offices within the Economic Programs, Demographic Programs, and Decennial Census plan, process, analyze, and disseminate data. The Census Bureau's Center for Statistical Research and Methodology supports all three directorates in areas of statistical, methodological, behavioral, and technological research and development. The Field Operations Directorate and Information Technology Directorate collect, transmit, and process data for demographic household surveys, the Decennial Census, the Economic Census and surveys, and the Government Census and surveys. The Census Bureau's other directorates and divisions provide various types of administrative, logistical, and strategic support to the program areas.

The responsibilities of the program areas and the supporting directorates and divisions with respect to these statistical quality standards include:

- Ensuring that the necessary resources are available to comply with the statistical quality standards.
- Implementing and verifying compliance with the statistical quality standards.

Guidance on implementing the standards and verifying compliance can be obtained from the program area's Methodology and Standards (M&S) Council representative as shown in Table 1.

Table 1. M&S Council Representative	
Program Directorate	**M&S Council Representative**
Decennial Census Directorate	Chief, Decennial Statistical Studies Division
Demographic Programs Directorate	Chief, Demographic Statistical Methods Division
Economic Programs Directorate	Chief, Office of Statistical Methods and Research for Economic Programs
All other directorates	Chief, Center for Statistical Research and Methodology

- Reporting situations where requirements of the standards might need revision (e.g., a program's processes or products may have changed so that some requirements of the statistical quality standards may also need to be revised).
- Following the procedure to obtain a waiver if unable to comply with one or more of the statistical quality standards.

Responsibilities of the Methodology and Standards Council

The Census Bureau's M&S Council consists of the division and office chiefs of the statistical methodology groups in the various program areas.

The Council advises the Census Bureau's Program Associate Directors on policy and issues affecting research and methodology for Census Bureau programs. The Council also ensures the use of sound statistical methods and practices, and facilitates communication and coordination of statistical methodology and research throughout the Census Bureau and the broader statistical community.

The responsibilities of the M&S Council with respect to these statistical quality standards include:

- Promoting awareness of and compliance with the Census Bureau's statistical quality standards.
- Reviewing waiver requests and forwarding their recommendation for approval or denial of the waiver to the Program Associate Director.
- Conducting periodic reviews and evaluations of the standards to study how well the standards are working and to identify difficulties in implementation.
- Maintaining an archive of evaluation findings, waiver requests, and suggestions for improvement to inform future revisions of the Census Bureau's statistical quality standards.
- Updating the standards as needed.

The responsibilities of the individual M&S Council members for their directorates (See Table 1.) include:

- Provide guidance on interpreting the standards to the programs in their directorates and to

directorates that participate in conducting and implementing their programs (e.g., the Field Operations Directorate).

- Provide assistance in implementing and verifying compliance with the standards to the programs in their directorates and to directorates that participate in conducting and implementing their programs (e.g., the Field Operations Directorate).

4. Interpreting and Using the Standards

The complete set of statistical quality standards includes process standards (designated with "A" through "F") and supporting standards (designated with "S"). The process standards are organized according to the different processes associated with developing and releasing information products. The organizational framework for these process standards is:

A. Planning and Development
B. Collecting and Acquiring Data
C. Capture and Processing Data
D. Producing Estimates and Measures
E. Analyzing Data and Reporting Results
F. Releasing Information

The supporting standards address issues that cut across all the process standards. The two supporting standards are S1, *Protecting Confidentiality*, and S2, *Managing Data and Documents*.

The standards are written at a broad level of detail, to apply to all the Census Bureau's programs and products. They describe *what* is required and do not delineate procedures for *how* to satisfy the requirements. Each standard has a

list of key terms that are used in the standard. These terms are defined in the glossary to provide clarification on their use in relation to these standards.

To help managers interpret the requirements of the standards, examples are often provided. These examples are intended to aid the program manager in understanding the requirements and to provide guidance on the types of actions that may be useful in satisfying the requirements. It is important to note that the examples listed under a requirement are not all-inclusive; nor will every example apply to every program or product. Finally, there may be more than one acceptable way to comply with a requirement. That is, several equally acceptable actions might be performed to comply with a requirement, rather than only one unique set of actions.

Program managers must use their judgment to determine which actions must be performed for their program to comply with a requirement. The program manager is expected to carry out all the actions needed to comply with a requirement. This may include performing activities not listed in the examples. The expectation is that program managers will balance the importance of the information product and the size of the project with the constraints of budget, schedule, and resources when determining how to comply with the requirements.

If the program manager believes it is not feasible to comply with a requirement, the program manager must request a waiver. The *Waiver Procedure* provides a standard mechanism to exempt a program from compliance with a

statistical quality standard when such an exemption is warranted. The Waiver Procedure also promotes proper management and control in implementing the standards. Finally, the Waiver Procedure ensures that appropriate documentation of exceptions to the standards is generated and maintained to inform future revisions of the statistical quality standards.

5. History of the Development of the Standards

The Census Bureau has a long history of delivering high quality data about the nation's people and economy. *Technical Paper 32, Standards for Discussion and Presentation of Errors in Data,* issued in March 1974, is an example of the Census Bureau's commitment to promote transparency in the quality of the information and data products it delivers to the public and to its sponsors.[2]

Over the years, the Census Bureau has developed additional guidance regarding the quality of its products and in 1998 began to formalize its efforts to ensure quality in its products and processes. The Census Bureau began this more formal approach by instituting a quality program based on a foundation of quality principles, standards, and guidelines. The paper, *Quality Program at the U.S. Census Bureau,* describes the beginnings of

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[2] *Technical Paper* 32 is available from the U.S. Government Printing Office, Washington, DC 20401. It was revised in: Gonzalez, M., Ogus, J., Shapiro, G., and Tepping, B. *Journal of the American Statistical Association,* Vol. 70, No. 351, Part 2: Standards for Discussion and Presentation of Errors in Survey and Census Data (Sep., 1975), pp. 5-23. http://www.jstor.org/stable/2286149

the Census Bureau's Quality Program (Proceedings of the International Conference on Quality in Official Statistics, 2001).

In 2001, the Census Bureau issued the first of eleven new statistical quality standards. Several of these standards updated the content of *Technical Paper 32*. Over the next four years, ten more standards were developed.

In 2005, after conducting a benchmarking study of the standards of other statistical organizations, the M&S Council initiated a more coordinated approach for developing a comprehensive set of statistical quality standards. While the existing standards were a good start, this approach aimed to improve consistency and cohesion among the standards, as well as to reflect all the requirements of the OMB's *Standards and Guidelines for Statistical Surveys* in the context of the Census Bureau's programs, products, and processes.

The new approach to developing statistical quality standards relied on five key components: 1) a dedicated staff to develop the standards, rather than ad hoc teams; 2) contractor assistance; 3) multiple reviews of draft standards to obtain feedback from the program areas; 4) focus groups to obtain more thoughtful and attentive input from the program areas; and 5) a documented, consistent development process.

The Census Bureau began developing these standards in May 2006. The process was completed in May 2010, when the Census Bureau issued these statistical quality standards.

* * *

4. A description of deliverables to be received as the result of any contracts originated by the Census Bureau, including any documentation to be provided by contractors.

   Examples of such deliverables include:
   - Computer software or hardware.
   - Data files.
   - Advertising or outreach services and materials.
   - Specifications for software or hardware.
   - Quality control or quality assurance procedures, criteria, and results.

Sub-Requirement A1-2.1: When the sponsor of a reimbursable project requests the Census Bureau to carry out activities that do not comply with our Statistical Quality Standards or deliver products that do not conform with the standards, the program manager must:

1. Obtain a waiver to carry out the noncompliant activities or to deliver the nonconforming products before agreeing to conduct the project. (See the *Waiver Procedure* for the procedures on obtaining a waiver.)
2. Obtain from the sponsor a copy of the clearance package approved by the OMB, including any associated terms of clearance.
3. Deliver to the sponsor written documentation that describes the following for each area of noncompliance:
   a. The details regarding the noncompliance issue.
   b. The consequences of performing the noncompliant work.
   c. The actions recommended by the Census Bureau that would result in compliance.

Requirement A1-3: For sample survey and census programs, a preliminary survey design must be developed that describes the:

1. Target population and sampling frame.
2. Sample design.
3. Key data items and key estimates.
4. Response rate goals.
5. Data collection methods.
6. Analysis methods.

Requirement A1-4: For administrative records projects, a preliminary study design must be developed that describes the:

1. Target population.
2. Coverage of the target population by the administrative records.
3. Key data items and key estimates.
4. Methods of integrating data sources, if more than one is used.
5. Analysis methods.

Note: See the Administrative Records Handbook for complete information on planning a project that uses administrative records.

Requirement A1-5: Any contract or statement of work originated by the Census Bureau for deliverables that will be used in information products released by the Census Bureau must include provisions that the contractor comply with the Census Bureau's statistical quality standards.

Requirement A1-6: Quality control checks must be performed to ensure the accuracy and completeness of the program plans, including all schedules, cost estimates, agreements (e.g., memoranda of understanding, statements of work, and contracts), survey designs, and study designs.

Requirement A1-7: Documentation needed to replicate and evaluate the data program must be produced. The documentation must be retained, consistent with applicable policies and data-use agreements, and must be made available to Census Bureau employees who need it to carry out their work. (See Statistical Quality Standard S2, *Managing Data and Documents*.)

Examples of documentation include:

- Program plans, including cost estimates and schedules, after all revisions.
- Survey designs.
- Study designs.
- Decision memoranda.

Notes:

(1) The documentation must be released on request to external users, unless the information is subject to legal protections or administrative restrictions that would preclude its release. (See Data Stewardship Policy DS007, *Information Security Management Program*.)

(2) Statistical Quality Standard F2, *Providing Documentation to Support Transparency in Information Products*, contains specific requirements about documentation that must be readily accessible to the public to ensure transparency of information products released by the Census Bureau.

Statistical Quality Standard A2 Developing Data Collection Instruments and Supporting Materials

Purpose: The purpose of this standard is to ensure that data collection instruments and supporting materials are designed to promote the collection of high quality data from respondents.

Scope: The Census Bureau's statistical quality standards apply to all information products released by the Census Bureau and the activities that generate those products, including products released to the public, sponsors, joint partners, or other customers. All Census Bureau employees and Special Sworn Status individuals must comply with these standards; this includes contractors and other individuals that receive Census Bureau funding to develop and release Census Bureau information products.

In particular, this standard applies to the development or redesign of data collection instruments and supporting materials. The types of data collection instruments and supporting materials covered by this standard include:

- Paper and electronic instruments (e.g., CATI, CAPI, Web, and touch tone data entry).
- Self-administered and interviewer-administered instruments.
- Instruments administered by telephone or in person.
- Respondent letters, aids, and instructions.
- Mapping and listing instruments used for operations, such as address canvassing, group quarters frame development, and the Local Update of Census Addresses (LUCA).

Exclusions:
In addition to the global exclusions listed in the Preface, this standard does not apply to:

- Data collection instruments and supporting materials where the Census Bureau does not have control over the content or format, such as the paper and electronic instruments used for collecting import and export merchandise trade data.

Key Terms: Behavior coding, CAPI, CATI, cognitive interviews, data collection instrument, field test, focus group, graphical user interface (GUI), imputation, integration testing, methodological expert review, nonresponse, pretesting, questionnaire, record linkage, respondent burden, respondent debriefing, split panel test, and usability testing.

Requirement A2-1: Throughout all processes associated with data collection, unauthorized release of protected information or administratively restricted information must be prevented by following federal laws (e.g., Title 13, Title 15, and Title 26), Census Bureau policies (e.g., Data Stewardship Policies), and additional provisions governing the use of the data (e.g., as may be specified in a memorandum of understanding or data-use agreement). (See Statistical Quality Standard S1, *Protecting Confidentiality*.)

Requirement A2-2: A plan must be produced that addresses:

1. Program requirements for the data collection instrument and the graphical user interface (GUI), if applicable (e.g., data collection mode, content, constraints, and legal requirements).

2. Supporting materials needed for the data collection (e.g., brochures, flashcards, and advance letters).
3. Pretesting of the data collection instrument and supporting materials.
4. Verification and testing to ensure the proper functioning of the data collection instrument and supporting materials.

Notes:

(1) Statistical Quality Standard A1, *Planning a Data Program*, addresses overall planning requirements, including the development of schedules and costs.

(2) See the *Guidelines for Designing Questionnaires for Administration in Different Modes* and the *Economic Directorate Guidelines on Questionnaire Design* for guidance on designing data collection instruments.

(3) Data Stewardship Policy DS016, *Respondent Identification Policy*, contains policy requirements for data collection operations involving households where respondents in households provide information.

Requirement A2-3: Data collection instruments and supporting materials must be developed and tested in a manner that balances (within the constraints of budget, resources, and time) data quality and respondent burden.

Sub-Requirement A2-3.1: Specifications for data collection instruments and supporting materials, based on program requirements, must be developed and implemented.

Examples of topics that specifications might address include:

- Requirements for programming the instrument to work efficiently. For example:
  - Built-in edits or range checks for electronic data collection instruments (e.g., edits for numeric data that must be within a pre-specified range).
  - Compliance with the CATI/CAPI Screen Standards for GUI (Windows-based) Instruments and Function Key Standards for GUI Instruments. (See the Technologies Management Office's Authoring Standards *Blaise Standards for Windows Surveys*).
  - Input and output files for data collection instruments.
- Segmented boxes for paper data collection instruments to facilitate scanning.
- Paper size, color, thickness, and formatting to ensure compatibility with data capture and processing systems for paper data collection instruments.
- Frequently Asked Questions about the data collection.
- Supporting materials, such as Help materials and instructions.

Note: The Census Bureau Guideline *Presentation of Data Edits to Respondents in Electronic Self-Administered Surveys* presents recommendations for designing editing functionality, presentation, and wording in both demographic and economic self-administered electronic surveys.

Sub-Requirement A2-3.2: Data collection instruments and supporting materials must clearly state the following required notifications to respondents:

1. The reasons for collecting the information.
2. A statement on how the data will be used.
3. An indication of whether responses are mandatory (citing authority) or voluntary.
4. A statement on the nature and extent of confidentiality protection to be provided, citing authority.
5. An estimate of the average respondent burden associated with providing the information.
6. A statement requesting that the public direct comments concerning the burden estimate and suggestions for reducing this burden to the appropriate Census Bureau contact.
7. The OMB control number and expiration date for the data collection.
8. A statement that the Census Bureau may not conduct, and a person is not required to respond to, a data collection request unless it displays a currently valid OMB control number.

Sub-Requirement A2-3.3: Data collection instruments and supporting materials must be pretested with respondents to identify problems (e.g., problems related to content, order/context effects, skip instructions, formatting, navigation, and edits) and then refined, prior to implementation, based on the pretesting results.

Note: On rare occasions, cost or schedule constraints may make it infeasible to perform complete pretesting. In such cases, subject matter and cognitive experts must discuss the need for and feasibility of pretesting. The program manager must document any

decisions regarding such pretesting, including the reasons for the decision. If no acceptable options for pretesting can be identified, the program manager must apply for a waiver. (See the *Waiver Procedure* for the procedures on obtaining a waiver.)

1. Pretesting must be performed when:
   a. A new data collection instrument is developed.
   b. Questions are revised because the data are shown to be of poor quality (e.g., unit or item response rates are unacceptably low, measures of reliability or validity are unacceptably low, or benchmarking reveals unacceptable differences from accepted estimates of similar characteristics).
   c. Review by cognitive experts reveals that adding pretested questions to an existing instrument may cause potential context effects.
   d. An existing data collection instrument has substantive modifications (e.g., existing questions are revised or new questions added).

Note: Pretesting is not required for questions that performed adequately in another survey.

2. Pretesting must involve respondents or data providers who are in scope for the data collection. It must verify that the questions:
   a. Can be understood and answered by potential respondents.
   b. Can be administered properly by interviewers (if interviewer-administered).

c. Are not unduly sensitive and do not cause undue burden.

Examples of issues to verify during pretesting:

- The sequence of questions and skip patterns is logical and easy-to-follow.
- The wording is concise, clear, and unambiguous.
- Fonts (style and size), colors, and other visual design elements promote readability and comprehension.

3. One or more of the following pretesting methods must be used:
   a. Cognitive interviews.
   b. Focus groups, but only if the focus group completes a self-administered instrument and discusses it afterwards.
   c. Usability techniques, but only if they are focused on the respondent's understanding of the questionnaire.
   d. Behavior coding of respondent/interviewer interactions.
   e. Respondent debriefings in conjunction with a field test or actual data collection.
   f. Split panel tests.

Notes:

(1) Methodological expert reviews generally do not satisfy this pretesting requirement. However, if a program is under extreme budget, resource, or time constraints, the program manager may request cognitive experts in the Center for Statistical Research and Methodology or on the Response Improvement Research Staff to conduct such a review. The results of this expert review must be documented in a

written report. If the cognitive experts do not agree that an expert review would satisfy this requirement, the program manager must apply for a waiver.

(2) Multiple pretesting methods should be used as budget, resources, and time permits to provide a thorough evaluation of the data collection instrument and to document that the data collection instrument "works" as expected. In addition, other techniques used in combination with the pretesting methods listed above may be useful in developing data collection instruments. (See Appendix A2, *Questionnaire Testing and Evaluation Methods for Censuses and Surveys*, for descriptions of the various pretesting methods available.)

4. When surveys or censuses are administered using multiple modes and meaningful changes to questions are made to accommodate the mode differences, all versions must be pretested.

   Meaningful changes to questions to accommodate mode differences include changes to the presentation of the question or response format to reflect mode-specific functional constraints or advantages. In these cases, the proposed wording of each version must be pretested to ensure consistent interpretation of the intent of the question across modes, despite structural format or presentation differences. As long as the proposed wording of each version is pretested,

testing of the mode (e.g., paper versus electronic) is not required, although it may be advisable.

5. Data collection instruments in any languages other than English must be pretested in the languages that will be used to collect data during production. Pretesting supporting materials in these languages is not required, but is recommended.

   Note: The Census Bureau Guideline *Language Translation of Data Collection Instruments and Supporting Materials* provides guidance on translating data collection instruments and supporting materials from English to another language.

Sub-Requirement A2-3.4: Data collection instruments and supporting materials must be verified and tested to ensure that they function as intended.

Examples of verification and testing activities include:

- Verifying that the data collection instrument's specifications and supporting materials reflect the sponsor's requirements (e.g., conducting walk-throughs to verify the appropriateness of specifications).
- Verifying that the data collection instrument and supporting materials meet all specifications (e.g., verifying correctness of skip patterns, wording, instrument fills, and instrument edits).

- Conducting integration testing using mock input files with realistic scenarios to test all parts of the data collection instrument together (e.g., front, middle, and back modules).
- Conducting usability testing to discover and eliminate barriers that keep respondents from completing the data collection instrument accurately and efficiently.
- Conducting output tests to compare the output of the data collection instrument under development with that of its predecessor (if the data collection has been done with a similar instrument in the past).
- Verifying that user interfaces work according to specifications.
- Verifying that user interfaces for electronic forms adhere to IT Standard 15.0.2, *Web Development Requirements and Guidelines*, and any other guidance applicable to the program.
- Verifying that Web-based data collection instruments comply with requirements of Section 508 of the U.S. Rehabilitation Act.
- Verifying that paper data collection instruments are compatible with the program's data capture and processing systems.

Note: The Census Bureau Guideline *Computer Assisted Personal Interviewing* reflects recommended practices for ensuring the quality of CAPI.

Requirement A2-4: Documentation needed to replicate and evaluate the development of data collection instruments and supporting materials must be produced. The documentation must be retained, consistent with applicable policies and data-use agreements, and must be made available to Census Bureau employees who need it to carry out their work. (See Statistical Quality Standard S2, *Managing Data and Documents.*)

Examples of documentation include:

- Plans for the development and testing of the data collection instrument and supporting materials.
- Specifications for the data collection instruments and supporting materials.
- Results of questionnaire development research (e.g., pretesting results, expert review reports, and site visit reports).
- Input files used to test the final production instrument and reports of testing results.
- Computer source code for the production data collection instrument along with information on the version of software used to develop the instrument.
- Quality measures and evaluation results. (See Statistical Quality Standard D3, *Producing Measures and Indicators of Nonsampling Error.*)

Notes:

(1) The documentation must be released on request to external users, unless the information is subject to legal protections or administrative restrictions that would preclude its release. (See Data Steward-

ship Policy DS007, *Information Security Management Program.*)

(2) Statistical Quality Standard F2, *Providing Documentation to Support Transparency in Information Products*, contains specific requirements about documentation that must be readily accessible to the public to ensure transparency of information products released by the Census Bureau.

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UNITED STATES DEPARTMENT OF COMMERCE
Economic and Statistics Administration
U.S. Census Bureau
Washington, DC 20233-0001

[LETTERHEAD]

2020 CENSUS PROGRAM MEMORANDUM SERIES: 2016.05

Date:	April 29, 2016
MEMORANDUM FOR:	The Record
From:	Lisa M. Blumerman **(signed April 29, 2016)** Associate Director, Decennial Census Programs
Subject:	Planned Development and Submission of *Subjects Planned for the 2020 Census Program and Questions Planned for the 2020 Census Program*
Contact:	Marisa Hotchkiss Decennial Communications Coordination Office 301-763-2891 Marisa.Tegler.Hotchkiss @census.gov

This memorandum officially documents the U.S. Census Bureau's plan to develop and transmit to Congress the *Subjects Planned for the 2020 Census Program and Questions Planned for the 2020 Census Program*.

Overview

Title 13, U.S. Code requires the Census Bureau to send Congress the subjects proposed to be included in the census not later than three years before the Census date. Congress will receive the *Subjects Planned for the 2020 Census Program*, describing the subjects proposed for the 2020 Census and the American Community Survey (ACS) before March 31, 2017.

Title 13 also requires that Congress receive the specific questions proposed to be included in the census not later than two years before the Census date. Congress will receive the *Questions Planned for the 2020 Census Program*, introducing the questions proposed for the 2020 Census and the ACS before March 31, 2018.

The Census Bureau will submit the topics included on the 2020 Census and ACS jointly, as ACS will incorporate 2020 Census content beginning in 2019, and the Census of Island Areas will incorporate a selection of these subjects and questions as well. As preparations begin for the 2020 Census, the content of both operations is jointly considered and finalized.

Scope

Previous submissions of the documentation regarding subjects and questions included the

following information, examples of which can be seen in Appendices A and B:

Subjects Planned Documentation

- A brief summary of the data created by each question collected;
- An explanation of how the data are currently used to meet federal needs;
- A selection of non-federal community uses of the data; and
- Selected statutory uses by agency.

Questions Planned Documentation

- An image of the paper (mailed) version of each question;
- A brief summary of the data created by each question collected;
- An explanation of how the data are currently used to meet federal needs; and
- A selection of non-federal community uses of the data.

The documentation submitted in 2017 and 2018 will include the same complement of information. Additionally, although the ACS and 2020 questions differ by response mode, the version highlighted in the question documentation will continue to be the version included on the paper questionnaire.

Project Timeline

Many stakeholders share an interest in the 2020 Census and ACS content, including federal agencies, federal statistical agencies, state and local governments, those who will respond to the 2020 Census and ACS, academia, businesses, nonprofit organizations, media, data users, and

oversight groups. The Census Bureau will develop this documentation through a process that is clear and transparent to all stakeholders, and offer opportunities for input to be provided and considered throughout the process.

The table below contains a timeline for this document development, as well as opportunities for stakeholders to comment on proposed content.[1]

Phase	Planned Activity	Planned Activity Timeline
1	Inform/Create General Awareness	March 2016—August 2016
2	Federal Agencies are Invited to Provide Updates to Federal Use Documentation	March 2016—June 2016
3	Incorporate Feedback	May 2016—September 2016
4	Develop Topic Submission	October 2016—December 2016
5	Provide Updates and Conduct Briefings	January 2017—March 2017

[1] These dates are intended to show the planned phases in the development of this documentation, though actual dates may be subject to change.

Phase	Planned Activity	Planned Activity Timeline
6	Final *Topics Planned* document available	No later than March 31, 2017
7	Follow-up with Federal Agencies about Federal Use Documentation *as needed*	March 2017—June 2017
8	*Federal Register* notice of Public Comment Period (proposed changes to ACS)	July 2017—September 2017 (60 days)
9	*Federal Register* notice of Public Comment Period II (ACS submission)	December 2017—January 2018 (30 days)
10	Submit Information Collection Request (ICR) to OMB under the Paperwork Reduction Act (proposed changes to ACS)	January 2018
11	*Federal Register* notice Public Comment Period (proposed content for 2020 Census)	May 2018—July 2018 (60 days)
12	*Federal Register* notice Public Comment Period II (2020 Census submission)	12 August 2018—September 2018 (30 days)

Phase	Planned Activity	Planned Activity Timeline
13	Submit Information Collection Request (ICR) to OMB under the Paperwork Reduction Act (proposed content for 2020 Census)	September 2018
14	Provide Updates and Conduct Briefings	January 2018—March 2018
15	Final *Questions Planned* document available	No later than March 31, 2018

Federal Agency Input

The Census Bureau intends to begin developing draft descriptions of each topic and question based on recent information about the federal requirements and uses of Census estimates. The current uses received from federal agency contacts as part of the 2014 ACS Content Review, as well as informational materials (FAQs, current question versions[2], etc.) are posted with this memorandum at http://www.census.gov/programs-

[2] Federal agency contacts should be aware that the topics and questions provided reflect past topics and questions (i.e., the topics and questions may change between the information gathering process and the final submission of the content).

surveys/decennial-census/2020-census/planning-management/memo-series.html. Federal agencies with known uses of the 2020 Census or ACS content, and select other agencies, will receive a letter with instructions for how federal data users may provide updates to the documentation of data uses. Responses should be received before July 1, 2016. Census Bureau staff may follow-up with federal users directly if more clarification is required.

Members of the White House Office of Management and Budget (OMB) Interagency Committee on the ACS and Interagency Committee on Statistical Policy Subcommittee on the ACS will be notified about this effort and encouraged to collaborate within their agencies on confirming existing uses, or submitting corrections and additions.

Though this initial effort will take place in 2016, additional follow-up may be needed in 2017 if changes to the content warrant another check-in with agencies.

Additionally, all interested stakeholders will be able to comment on the *Federal Register* notices related to proposed changes in the content.

Content Determination

This process assumes that there will be changes to the ACS content and that the 2020 Census content may also feature new or different questions. The development of this content, including proposals for new questions, will continue to follow the normal content development process (outside the scope of the development of the subjects and

questions submission). However, it is important to note that these processes offer opportunities for all stakeholders to comment on the proposed subjects and questions.

In general, proposed changes to questions, proposed by federal agencies through OMB, must demonstrate a clear need for data at the geographic levels provided by the 2020 Census or ACS. OMB, the Census Bureau, and interagency committees (with federal agency representation) consider these proposals, conduct qualitative research and testing, and evaluate the resulting estimates. Final proposed questions are based on the results of extensive cognitive testing, field testing, other ongoing research, and input from advisory committees.

To comply with the Paperwork Reduction Act (PRA) and its implementing regulations, the Census Bureau must submit an Information Collection Request (ICR) to OMB. This set of documents describes the information needed, why it is needed, how it will be collected, and how much collecting the information will cost the respondents and the government.

Before an ICR is submitted, the Census Bureau will publish a *Federal Register* notice informing the public of an intent to ask for clearance for the collection of information and soliciting comments for a 60 day period. Census Bureau staff then respond to comments received, and make necessary revisions.

When the final ICR is prepared, a second *Federal Register* notice is published. This second

opportunity for public comment notifies the public that the clearance request has been submitted to OMB and they have an opportunity to comment. OMB reviews the ICR and public comments over a 60-day period, and determines whether or not to authorize the change.

ICRs for the 2020 Census and ACS are planned for 2018. The ACS submission will include a plan to incorporate questions developed for the 2020 Census along with changes recommended by the 2016 ACS Content Test. Stakeholders will have an opportunity to comment on these potential changes during the *Federal Register* notice comment periods.

If the ICRs are finalized before the March 31, 2018 submission to Congress, the *Questions Planned for the 2020 Census* will reflect only content that has been approved by OMB. Alternatively, content that has not been authorized by OMB will be noted as "proposed" in the submission.

Final Product

The final *Subjects for the 2020 Census Program* and *Questions for the 2020 Census Program* documents will be printed and submitted to Congress. Additional .pdf versions of these documents and supporting materials will concurrently be made available on the census.gov website.

The 2020 Census Memorandum Series

The 2020 Census Memorandum Series documents significant decisions, actions, and accom-

plishments of the 2020 Census Program for the purpose of informing stakeholders, coordinating interdivisional efforts, and documenting important historical changes.

A memorandum generally will be added to this series for any decision that meets the following criteria:

1. A major program-level decision that will affect the overall design or have a significant effect on the 2020 Census operations or systems.
2. A major policy decision or change that will affect the overall design or significantly impact the 2020 Census operations or systems.

Visit 2020 Census on census.gov to access the Memorandum Series, the 2020 Operational Plan, and other information about preparations for the 2020 Census.

Appendix A: Subjects Planned for the 2010 Census and American Community Survey Federal Legislative and Program Uses (Age)

AGE *asked since 1800*

MEETING FEDERAL NEEDS

Age is central for any number of federal programs that target funds or services to children, working-age adults, women of childbearing age, or the older population. The Department of Education uses census age data in its formula for allotment to states. Under the Voting Rights Act, the data

on population of voting age are required for legislative redistricting. The Department of Veterans Affairs uses age to develop its mandated state projections on the need for hospitals, nursing homes, cemeteries, domicilary services, and other benefits for veterans.

COMMUNITY BENEFITS

Education

Counties and school districts are allotted funds based on age data. These funds provide resources and services to improve the education of economically disadvantaged children and children with disabilities.

Location where new schools are needed, as well as the required grade levels (elementary, middle, or high school) are identified using data about age.

Government

Data presenting the voting-age population are used by states to meet legislative redistricting requirements.

Planners at all levels of government forecast the need for highways, hospitals, health services, and retirement homes by using age data.

Employment

Data about age are used to target veterans for job training programs.

Equal employment opportunities are enforced using data about age.

Social Services

Age data are used to forecast the number of people eligible for Social Security and Medicare benefits.

Under the Older Americans Act, age data are part of the formula used to allocate funds for services to seniors with low incomes.

AGE *asked since 1800*

SELECTED STATUTORY USES

EDUCATION	**Individuals With Disabilities Education Act [20 U.S.C. 1411(e), Chapter 33, Subchapter II], Vocational and Technical Education Assistance to the States [20 U.S.C. 2321(a)(2)(A), (B), & (C) and 2372(a)], School-to-Work Opportunities Act [20 U.S.C. 6145 & 6177, Chapter 69, Subchapter II-Part B and Subchapter III]**
EEOC	**Age Discrimination and Employment Act [29 U.S.C. 623 & 633; 29 CFR 1625.7(c)]**

HHS	Older Americans Act [42 U.S.C. 3002(28)-(30), 3025(a)(1)(E) & (2)(E), and 3026(a)(1)], Public Health Service Act [42 U.S.C. 254b(b)(3)(A) & (B), 254e(b) & (d) & 254f-1], Low-Income Home Energy Assistance Program (LIHEAP) [42 U.S.C. 8629(a) & (b)(2), and 8622(11)]
HUD	Community Development Block Grant (CDBG) Program [42 U.S.C. 5302(a)(6)(D)(iv)]
JUSTICE	Voting Rights Act-Bilingual Election Requirements [42 U.S.C. 1973aa-1a; 28 CFR Part 55], Civil Rights Act (Unlawful Employment Practices) [42 U.S.C. 2000e-2]
LABOR	Workforce Investment Act of 1998 [P.L. 105-220, Sec. 182(a)]

VA	State Projections of Veteran Population [38 U.S.C. 8131(1) & 8134(a)(2)], Veterans Benefits Improvement Act [38 U.S.C. 317 & 318, Chapter 3], Disabled Veterans Outreach Program [38 U.S.C. 4103A(a)(1), Chapter 41]

Note: These statutory uses were last confirmed in 2002. Work is underway with other Federal agencies to develop a comprehensive list of the most current statutory uses supporting each 2010 Census and American Community Survey question. An updated list will be included in the March 2008 submission of *Questions Planned for the 2010 Census and American Community Survey.*

Appendix B: Questions Planned for the 2010 Census and American Community Survey

Federal Legislative and Program Uses (Age)

AGE *asked since 1800*

7. **What is Person 1's age and what is Person 1's date of birth?**
Please report babies as age 0 when the child is less than 1 year old.
Print numbers in boxes.

Age on April, 2010 [ ][ ][ ]

Month [ ][ ]

Day [ ][ ]

Year of birth [ ][ ][ ][ ]

MEETING FEDERAL NEEDS

Age is central for any number of federal programs that target funds or services to children, working-age adults, women of childbearing age, or the older population. The Department of Education uses census age data in its formula for allotment to states. Under the Voting Rights Act , the data on population of voting age are required for legislative redistricting. The U.S. Department of Veterans Affairs uses age to develop its mandated state projections on the need for hospitals, nursing homes, cemeteries, domiciliary services, and other benefits for veterans.

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Counties and school districts are allotted funds based on age data. These funds provide resources and services to improve the education of economically disadvantaged children and children with disabilities.

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Under the Older Americans Act, age data are part of the formula used to allocate funds for services to seniors with low incomes.

PX-398(R)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 1:18-cv-05025-JMF

Hon. Jesse M. Furman

NEW YORK IMMIGRATION COALITION, *et. al*,

Plaintiff,

—v.—

UNITED STATES DEPARTMENT OF COMMERCE, *et. al*,

Defendant.

DEFENDANTS' OBJECTIONS AND RESPONSES TO PLAINTIFFS' REQUESTS FOR ADMISSION TO DEFENDANT UNITED STATES DEPARTMENT OF COMMERCE

Pursuant to Federal Rules of Civil Procedure 26 and 36 and the Local Rules of this Court Defendant the United State Department of Commerce ("Defendant"), by and through counsel,

provides the following objections and responses to Plaintiffs' requests for admissions.

OBJECTIONS WHICH APPLY TO ALL REQUESTS FOR ADMISSION

1. Separate and apart from the specific objections set forth below, Defendants object to any discovery taking place in this case to the extent such discovery is brought pursuant to claims purportedly under the Administrative Procedure Act, as resolution of any such claims should be based upon the administrative record in this case.

2. Each and every response contained herein is subject to the above objection, which applies to each and every response, regardless of whether a specific objection is interposed in a specific response. The making of a specific objection in response to a particular request is not intended to constitute a waiver of any other objection not specifically referenced in the particular response.

* * *

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RESPONSE: Admit to the extent that Secretary Ross came to believe at some point during the Spring of 2017 that the inclusion of a citizenship question on the 2020 decennial census could be warranted, but further state that Secretary Ross did not reach a final conclusion on the issue until March 2018. Defendants otherwise deny this request for admission.

61. Before the end of April 2017 Defendant Ross requested others in the Commerce Department to

do what was necessary to include a citizenship question in the 2020 Census.

OBJECTION: Defendants incorporate by reference the above objections to the definitions and instructions.

RESPONSE: Admit to the extent that before the end of April 2017, Secretary Ross asked others in the Commerce Department to look into the possibility of reinstating a citizenship question on the 2020 decennial census, but deny that Secretary Ross requested that others in the Commerce Department "do what was necessary to include a citizenship question in the 2020 Census."

62. On May 2, 2017 Defendant Ross emailed Earl Comstock, the Director of Policy at Commerce, stating that he was "mystified why nothing have [sic] been done in response to my months old request that we include the citizenship question [on the 2020 Census]."

OBJECTION: Defendants incorporate by reference the above objections to the definitions and instructions.

RESPONSE: Admit.

63. On May 2, 2017 Mr. Comstock responded to Defendant Ross promising "on the citizenship question we will get that in place."

OBJECTION: Defendants incorporate by reference the above objections to the definitions and instructions.

RESPONSE: Admit that on May 2, 2017, Mr. Comstock responded to an email from Secretary Ross in which he stated, among other things, that "[o]n the citizenship question we will get that in place."

PX-359

OFFICE OF MANAGEMENT AND BUDGET STANDARDS AND GUIDELINES FOR STATISTICAL SURVEYS

September 2006

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LIST OF STANDARDS FOR STATISTICAL SURVEYS

SECTION 1 DEVELOPMENT OF CONCEPTS, METHODS, AND DESIGN

Survey Planning

Standard 1.1: Agencies initiating a new survey or major revision of an existing survey must develop a written plan that sets forth a justification, including: goals and objectives; potential users; the decisions the survey is designed to inform; key survey estimates; the precision required of the estimates (e.g., the size of differences that need to be detected); the tabulations and analytic results that will inform decisions and other uses; related and previous surveys; steps taken to prevent unnecessary duplication with other sources of information; when and how frequently users need the data; and the level of detail needed in tabulations, confidential microdata, and public-use data files.

Survey Design

Standard 1.2: Agencies must develop a survey design, including defining the target population, designing the sampling plan, specifying the data collection instrument and methods, developing a realistic timetable and cost estimate, and selecting samples using generally accepted statistical methods (e.g., probabilistic methods that can provide estimates of sampling error). Any use of nonprobability sampling methods (e.g., cut-off or model-based samples) must be justified statistically and be able to measure estimation error. The size and design of the sample must reflect the level of detail needed in tabulations

and other data products, and the precision required of key estimates. Documentation of each of these activities and resulting decisions must be maintained in the project files for use in documentation (see Standards 7.3 and 7.4).

Survey Response Rates

Standard 1.3: Agencies must design the survey to achieve the highest practical rates of response, commensurate with the importance of survey uses, respondent burden, and data collection costs, to ensure that survey results are representative of the target population so that they can be used with confidence to inform decisions. Nonresponse bias analyses must be conducted when unit or item response rates or other factors suggest the potential for bias to occur.

Pretesting Survey Systems

Standard 1.4: Agencies must ensure that all components of a survey function as intended when implemented in the full-scale survey and that measurement error is controlled by conducting a pretest of the survey components or by having successfully fielded the survey components on a previous occasion.

SECTION 2 COLLECTION OF DATA

Developing Sampling Frames

Standard 2.1: Agencies must ensure that the frames for the planned sample survey or census are appropriate for the study design and are evaluated against the target population for quality.

Required Notifications to Potential Survey Respondents

Standard 2.2: Agencies must ensure that each collection of information instrument clearly states the reasons the information is planned to be collected; the way such information is planned to be used to further the proper performance of the functions of the agency; whether responses to the collection of information are voluntary or mandatory (citing authority); the nature and extent of confidentiality to be provided, if any, citing authority; an estimate of the average respondent burden together with a request that the public direct to the agency any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden; the OMB control number; and a statement that an agency may not conduct and a person is not required to respond to an information collection request unless it displays a currently valid OMB control number.

Data Collection Methodology

Standard 2.3: Agencies must design and administer their data collection instruments and methods in a manner that achieves the best balance between maximizing data quality and controlling measurement error while minimizing respondent burden and cost.

SECTION 3 PROCESSING AND EDITING OF DATA

Data Editing

Standard 3.1: Agencies must edit data appropriately, based on available information, to mitigate or correct detectable errors.

Nonresponse Analysis and Response Rate Calculation

Standard 3.2: Agencies must appropriately measure, adjust for, report, and analyze unit and item nonresponse to assess their effects on data quality and to inform users. Response rates must be computed using standard formulas to measure the proportion of the eligible sample that is represented by the responding units in each study, as an indicator of potential nonresponse bias.

Coding

Standard 3.3: Agencies must add codes to collected data to identify aspects of data quality from the collection (e.g., missing data) in order to allow users to appropriately analyze the data. Codes added to convert information collected as text into a form that permits immediate analysis must use standardized codes, when available, to enhance comparability.

Data Protection

Standard 3.4: Agencies must implement safeguards throughout the production process to ensure that survey data are handled to avoid disclosure.

Evaluation

Standard 3.5: Agencies must evaluate the quality of the data and make the evaluation public (through technical notes and documentation included in reports of results or through a separate report) to allow users to interpret results of analyses, and to help designers of recurring surveys focus improvement efforts.

* * *

INTRODUCTION

This document provides 20 standards that apply to Federal censuses and surveys whose statistical purposes include the description, estimation, or analysis of the characteristics of groups, segments, activities, or geographic areas in any biological, demographic, economic, environmental, natural resource, physical, social, or other sphere of interest. The development, implementation, or maintenance of methods, technical or administrative procedures, or information resources that support such purposes are also covered by these standards. In addition, these standards apply to censuses and surveys that are used in research studies or program evaluations if the purpose of the survey meets any of the statistical purposes noted above. To the extent they are applicable, these standards also cover the compilation of statistics based on information collected from individuals or firms (such as tax returns or the financial and operating reports required by regulatory commissions), applications/registrations, or other administrative records.

Background

Standards for Federal statistical programs serve both the interests of the public and the needs of the government. These standards document the professional principles and practices that Federal agencies are required to adhere to and the level of quality and effort expected in all statistical activities. Each standard has accompanying guidelines that present recommended best practices to fulfill the goals of the standards.

Taken together, these standards and guidelines provide a means to ensure consistency among and within statistical activities conducted across the Federal Government. Agency implementation of standards and guidelines ensures that users of Federal statistical information products are provided with details on the principles and methods employed in the development, collection, processing, analysis, dissemination, and preservation of Federal statistical information.

In 2002, the U.S. Office of Management and Budget (OMB), in response to Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106-554), popularly known as the Information Quality Act, issued government-wide guidelines that "provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies" (67 FR 8452-8460; February 22, 2002). Federal statistical agencies worked together to draft a common framework to use in developing their individual Information Quality Guidelines. That framework, published in the June 4, 2002, *Federal Register* Notice, "Federal Statistical Organizations' Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Disseminated Information" (67 FR 38467-38470), serves as the organizing framework for the standards and guidelines

presented here.[1] The framework for these standards and guidelines includes:

- Development of concepts, methods, and design
- Collection of data
- Processing and editing of data
- Production of estimates and projections
- Data analysis
- Review procedures
- Dissemination of Information Products.

Within this framework, the 20 standards and their related guidelines for Federal statistical surveys focus on ensuring high quality statistical surveys that result in information products satisfying an agency's and OMB's Information Quality Guidelines' requirements for ensuring and maximizing the quality, objectivity, utility, and integrity of information disseminated by the Federal Government.

The standards and guidelines are not intended to substitute for the extensive existing literature on statistical and survey theory, methods, and

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[1] The *Federal Register* notice included eight areas where statistical organizations set standards for performance. The framework utilized here combines "Development of concepts and methods" with "Planning and design of surveys and other means of collecting data" into the single section on "Development of concepts, methods, and design." The standards for these activities were closely linked and attempting to separate them into two distinct sections would have resulted in some duplication of standards between sections. The only other change is the title of Section 7, which was shortened to "Dissemination of Information Products" for convenience rather than "Dissemination of data by published reports, electronic files, and other media requested by users" as it originally appeared in the Federal Register notice.

operations. When undertaking a survey, an agency should engage knowledgeable and experienced survey practitioners to effectively achieve the goals of the standards. Persons involved should have knowledge and experience in survey sampling theory, survey design and methodology, field operations, data analysis, and dissemination as well as technological aspects of surveys.

Under the OMB Information Quality Guidelines, quality is an encompassing term comprising objectivity, utility, and integrity.

Objectivity refers to whether information is accurate, reliable, and unbiased, and is presented in an accurate, clear, and unbiased manner. It involves both the content of the information and the presentation of the information. This includes complete, accurate, and easily understood documentation of the sources of the information, with a description of the sources of any errors that may affect the quality of the data, when appropriate. Objectivity is achieved by using reliable information sources and appropriate techniques to prepare information products.

Standards related to the production of accurate, reliable, and unbiased information include Survey Response Rates (1.3), Developing Sampling Frames (2.1), Required Notifications to Potential Survey Respondents (2.2), Data Collection Methodology (2.3), Data Editing (3.1), Nonresponse Analysis and Response Rate Calculation (3.2), Coding (3.3), Evaluation (3.5), Developing Estimates and Projections (4.1), Analysis and Report Planning (5.1), and Inference and Comparisons (5.2).

Standards related to presenting results in an accurate, clear, and unbiased manner include: Review of Information Products (6.1), Survey Documentation (7.3), and Documentation and Release of Public-Use Microdata (7.4).

Utility refers to the usefulness of the information that is disseminated to its intended users. The usefulness of information disseminated by Federal agencies should be considered from the perspective of specific subject matter users, researchers, policymakers, and the public. Utility is achieved by continual assessment of information needs, anticipating emerging requirements, and developing new products and services.

To ensure that information disseminated by Federal agencies meets the needs of the intended users, agencies rely upon internal reviews, analyses, and evaluations along with feedback from advisory committees, researchers, policymakers, and the public. In addition, agencies should clearly and correctly present all information products in plain language geared to their intended audiences. The target audience for each product should be clearly identified, and the product's contents should be readily accessible to that audience.

In all cases, the goal is to maximize the usefulness of information and minimize the costs to the government and the public. When disseminating their information products, Federal agencies should utilize a variety of efficient dissemination channels so that the public, researchers, and policymakers can locate and use information in an equitable, timely, and cost-effective fashion.

The specific standards that contribute directly to the utility and the dissemination of information include: Survey Planning (1.1), Survey Design (1.2), Pretesting Survey Systems (1.4), Review of Information Products (6.1), Releasing Information (7.1), Survey Documentation (7.3), and Documentation and Release of Public-Use Microdata (7.4).

Integrity refers to the security or protection of information from unauthorized access or revision. Integrity ensures that the information is not compromised through corruption or falsification.

Federal agencies have a number of statutory and administrative provisions governing the protection of information. Examples that may affect all Federal agencies include the Privacy Act; the Freedom of Information Act; the Confidential Information Protection and Statistical Efficiency Act of 2002; the Federal Information Security Management Act of 2002; the Health Insurance Portability and Accountability Act of 1996; OMB Circular Nos. A-123, A-127, and A-130; and the Federal Policy for the Protection of Human Subjects. The standards on Required Notifications to Potential Survey Respondents (2.2), Data Protection (3.4), and Data Protection and Disclosure Avoidance for Dissemination (7.2) directly address statistical issues concerning the integrity of data.

Requirements for Agencies

The application of standards to the wide range of Federal statistical activities and uses requires judgment that balances such factors as the uses of the resulting information and the efficient allocation of resources; this should not be a

mechanical process. Some surveys are extremely large undertakings requiring millions of dollars, and the resulting general-purpose statistics have significant, far-reaching effects. (Examples of major Federal information programs, many based on statistical surveys, are the Principal Federal Economic Indicators.[2]) Other statistical activities may be more limited and focused on specific program areas (e.g., customer satisfaction surveys, program evaluations, or research).

For each statistical survey in existence when these standards are issued and for each new survey, the sponsoring and/or releasing agency should evaluate compliance with applicable standards. The agency should establish compliance goals for applicable standards if a survey is not in compliance. An agency should use major survey revisions or other significant survey events as opportunities to address areas in which a survey is not in compliance with applicable standards.

Federal agencies are required to adhere to all standards for every statistical survey, even those that have already received OMB approval. Agencies should provide sufficient information in their Information Collection Requests (ICR) to OMB under the Paperwork Reduction Act (PRA) to demonstrate whether they are meeting the standards. OMB recognizes that these standards cannot be applied uniformly or precisely in every situation. Consideration will be given to the importance of the uses of the information as well

[2] For the list of principal economic indicators and their release dates see http://www.whitehouse.gov/omb/inforeg/statpolicy.html#sr

as the quality required to support those uses. If funding or other contingencies make it infeasible for all standards to be met, agencies should discuss in their ICR submissions the options that were considered and why the final design was selected.

The agency should also include in the standard documentation for the survey, or in an easily accessible public venue, such as on its web site, the reasons why the standard could not be met and what actions the agency has taken or will take to address any resulting issues.[3]

The following standards and guidelines are not designed to be completely exhaustive of all efforts that an agency may undertake to ensure the quality of its statistical information. Agencies are encouraged to develop additional, more detailed standards focused on their specific statistical activities.

The standards are presented in seven sections. For each standard, there is a list of key terms that are used in the standard or accompanying guidelines, and these terms are defined in the appendix to provide clarification on their use in this document. The guidelines for each standard represent best practices that may be useful in fulfilling the goals of the standard and provide greater specificity and detail than the standards. However, as noted earlier, these standards and guidelines are not intended to substitute for the

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[3] In cases where the agency determines that ongoing surveys are not in compliance with the standards, the documentation should be updated at the earliest possible time.

extensive existing literature on statistical and survey theory, methods, and operations. Additional information relevant to the standards can be found in other more specialized publications, and references to other Federal guidance documents or resources and the work of the Federal Committee on Statistical Methodology are provided in this document.

Agencies conducting surveys should also consult guidance issued by OMB entitled *Questions and Answers When Designing Surveys for Information Collections*. That document was developed by OMB to assist agencies in preparing their Information Collection Requests for OMB review under the Paperwork Reduction Act (PRA). The PRA requires that all Federal agencies obtain approval from OMB prior to collecting information from ten or more persons.[4]

* * *

Section 1.4 Pretesting Survey Systems

Standard 1.4: Agencies must ensure that all components of a survey function as intended when implemented in the full-scale survey and that measurement error is controlled by conducting a pretest of the survey components or by having successfully fielded the survey components on a previous occasion.

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[4] Under the PRA, "Person means an individual, partnership, association, corporation (including operations of government-owned contractor-operated facilities), business trust, or legal representative, an organized group of* * *

Key Terms: cognitive interview, edit, estimation, field test, focus group, frame, pretest, survey system, usability testing

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The following guidelines represent best practices that may be useful in fulfilling the goals of the standard:

Guideline 1.4.1: Test new components of a survey using methods such as cognitive testing, focus groups, and usability testing, prior to a field test of the survey system and incorporate the results from these tests into the final design.

Guideline 1.4.2: Use field tests prior to implementation of the full-scale survey when some or all components of a survey system cannot be successfully demonstrated through previous work. The design of a field test should reflect realistic conditions, including those likely to pose difficulties for the survey. Elements to be tested include, for example, frame development, sample selection, questionnaire design, data collection, item feasibility, electronic data collection capabilities, edit specifications, data processing, estimation, file creation, and tabulations. A complete test of all components (sometimes referred to as a dress rehearsal) may be desirable for highly influential surveys.

SECTION 2 COLLECTION OF DATA

Section 2.1 Developing Sampling Frames

Standard 2.1: Agencies must ensure that the frames for the planned sample survey or census are appropriate for the study design and are evaluated against the target population for quality.

Key Terms: bias, coverage, estimation, frame, frame populations, target populations

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The following guidelines represent best practices that may be useful in fulfilling the goals of the standard:

Guideline 2.1.1: Describe target populations and associated survey or sampling frames. Include the following items in this description:

1. The manner in which the frame was constructed and the maintenance procedures;
2. Any exclusions that have been applied to target and frame populations;
3. Coverage issues such as alternative frames that were considered, coverage rates (an estimation of the missing units on the frame (undercoverage), and duplicates on the frame (overcoverage)), multiple coverage rates if some addresses target multiple populations (such as schools and children or households and individuals), what was done to improve the coverage of the frame, and how data quality and item nonresponse on the frame may have affected the coverage of the frame;
4. Any estimation techniques used to improve the coverage of estimates such as post-stratification procedures; and
5. Other limitations of the frame including the timeliness and accuracy of the frame (e.g., misclassification, eligibility, etc.).

Guideline 2.1.2: Conduct periodic evaluations of coverage rates and coverage of the target population in survey frames that are used for

recurring surveys, for example, at least every 5 years.

Guideline 2.1.3: Coverage rates in excess of 95 percent overall and for each major stratum are desirable. If coverage rates fall below 85 percent, conduct an evaluation of the potential bias.

Guideline 2.1.4: Consider using frame enhancements, such as frame supplementation or dual-frame estimation, to increase coverage.

For more information on developing survey frames, see *Federal Committee on Statistical Methodology (FCSM) Statistical Policy Working Paper 17, Survey Coverage*.

Section 2.2 Required Notifications to Potential Survey Respondents

Standard 2.2: Agencies must ensure that each collection of information instrument clearly states the reasons the information is planned to be collected; the way such information is planned to be used to further the proper performance of the functions of the agency; whether responses to the collection of information are voluntary or mandatory (citing authority); the nature and extent of confidentiality to be provided, if any, citing authority; an estimate of the average respondent burden together with a request that the public direct to the agency any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden; the OMB control number; and a statement that an agency may not conduct and a person is not required to respond to an information collection request unless it displays a currently valid OMB control number.

Key Terms: confidentiality, mandatory, respondent burden, voluntary

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The following guideline represents best practices that may be useful in fulfilling the goals of the standard:

Guideline 2.2.1: Provide appropriate informational materials to respondents, addressing respondent burden as well as the scope and nature of the questions to be asked. The materials may include a pre-notification letter, brochure, set of questions and answers, or an 800 number to call that does the following:

1. Informs potential respondents that they have been selected to participate in a survey;
2. Informs potential respondents about the name and nature of the survey; and
3. Provides any additional information to potential respondents that the agency is required to supply (e.g., see further requirements in the regulations implementing the Paperwork Reduction Act, 5 C.F.R. § 1320.8(b)(3)).

Section 2.3 Data Collection Methodology

Standard 2.3: Agencies must design and administer their data collection instruments and methods in a manner that achieves the best balance between maximizing data quality and controlling measurement error while minimizing respondent burden and cost.

Key Terms: imputation, item nonresponse, nonresponse bias, required response item, respondent burden, response analysis survey, response rates, target population, validation studies

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The following guidelines represent best practices that may be useful in fulfilling the goals of the standard:

Guideline 2.3.1: Design the data collection instrument in a manner that minimizes respondent burden, while maximizing data quality. The following strategies may be used to achieve these goals:

1. Questions are clearly written and skip patterns easily followed;
2. The questionnaire is of reasonable length;
3. The questionnaire includes only items that have been shown to be successful in previous administrations or the questionnaire is pretested to identify problems with interpretability and ease in navigation.
4. Methods to reduce item nonresponse are adopted.

Guideline 2.3.2: Encourage respondents to participate to maximize response rates and improve data quality. The following data collection strategies can also be used to achieve high response rates:

1. Ensure that the data collection period is of adequate and reasonable length;
2. Send materials describing the data collection to respondents in advance, when possible;
3. Plan an adequate number of contact attempts; and

4. If applicable, train interviewers and other staff who may have contact with respondents in techniques for obtaining respondent cooperation and building rapport with respondents. Techniques for building rapport include respect for respondents' rights, follow-up skills, knowledge of the goals and objectives of the data collection, and knowledge of the uses of the data.
5. Although incentives are not typically used in Federal surveys, agencies may consider use of respondent incentives if they believe incentives would be necessary to use for a particular survey in order to achieve data of sufficient quality for their intended use(s).

Guideline 2.3.3: The way a data collection is designed and administered also contributes to data quality. The following issues are important to consider:
1. Given the characteristics of the target population, the objectives of the data collection, the resources available, and time constraints, determine the appropriateness of the method of data collection (e.g., mail, telephone, personal interview, Internet);
2. Collect data at the most appropriate time of year, when relevant;
3. Establish the data collection protocol to be followed by the field staff;
4. Provide training for field staff on new protocols, with refresher training on a routine, recurring cycle;
5. Establish best practice mechanisms to minimize interviewer falsification, such as protocols for monitoring interviewers and reinterviewing respondents;

6. Conduct response analysis surveys or other validation studies for new data collection efforts that have not been validated;
7. Establish protocols that minimize measurement error, such as conducting response analysis surveys to ensure records exist for data elements requested for business surveys, establishing recall periods that are reasonable for demographic surveys, and developing computer systems to ensure Internet data collections function properly; and
8. Quantify nonsampling errors to the extent possible.

Guideline 2.3.4: Develop protocols to monitor data collection activities, with strategies to correct identified problems. The following issues are important to consider:
1. Implement quality and performance measurement and process control systems to monitor data collection activities and integrate them into the data collection process. These processes, systems, and tools will provide timely measurement and reporting of all critical components of the data collection process, on the dimensions of progress, response, quality, and cost. Thus, managers will be able to identify and resolve problems and ensure that the data collection is completed successfully. Additionally, these measurements will provide survey designers and data users with indicators of survey performance and resultant data quality.
2. Use internal reporting systems that provide timely reporting of response rates and the reasons for nonresponse throughout the data collection. These systems should be flexible enough to

identify important subgroups with low response rates for more intensive follow-ups.

3. If response rates are low and it is impossible to conduct more extensive procedures for the full sample, select a probabilistic subsample of nonrespondents for the more intensive data collection method. This subsample permits a description of nonrespondents' characteristics, provides data needed for nonresponse bias analysis, and allows for possible weight adjustments or for imputation of missing characteristics.

4. Determine a set of required response items to obtain when a respondent is unwilling to cooperate fully. These items may then be targeted in the nonresponse follow-up in order to meet the minimum standard for unit response. These items may also be used in a nonresponse bias analysis that compares characteristics of respondents and nonrespondents using the sample data for those items. These required response items may also be used for item nonresponse imputation systems.

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STATISTICAL POLICY DIRECTIVE NO. 2 ADDENDUM: STANDARDS AND GUIDELINES FOR COGNITIVE INTERVIEWS

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LIST OF COGNITIVE INTERVIEW STANDARDS

Methodological Plan
Standard A.1: A methodological plan must be developed prior to conducting a cognitive interview study. This includes (but is not limited to) an articulation of the study objective, sampling plan, recruitment of respondents, location of interviews, an interview guide, and type of analysis to be conducted.

Sample Selection
Standard A.2: Sample selection for a cognitive interview study must be done in a purposeful way to ensure that the respondents have the characteristics necessary to provide data required to meet the study objectives.

Interview Guide
Standard A.3: An interview guide, or interview protocol, is required and must be designed to collect the processes by which a respondent interprets and responds to a question as well as any difficulties experienced by a respondent in providing an answer. Interview guides contain the questions to be evaluated along with interviewer instructions, such as follow up probe questions, for obtaining information needed to meet study objectives. The guide must direct the interview process so that respondents reveal how and why they answered the question as they did.

Systematic Analysis
Standard A.4: The data produced must undergo a systematic analysis. A systematic analysis ensures that no particular case is overemphasized and that findings represent the full range of

responses. Analysts must examine data within interviews, across interviews (by question) and across subgroups (when appropriate given the purpose of the study) with the goal of identifying thematic patterns in question interpretations and response error.

Transparent Analysis
Standard A.5: Analysis of cognitive interviews must be transparent such that study findings can be traced to original data collected in the cognitive interviews.

Final Reports
Standard A.6: The methods used, results obtained, and conclusions drawn must be documented in a final report.

Reporting Results
Standard A.7: Final reports must be made available to the public if cognitive study results are referenced in publications or data collection documentation.

INTRODUCTION

Standards for Federal statistical programs serve both the interests of the public and the needs of the government. These standards document minimum professional practices that Federal agencies are required to implement to demonstrate the responsibilities described in *Statistical Policy Directive No. 1: Fundamental Responsibilities of Federal Statistical Agencies and Recognized Statistical Units.*

This document is an Addendum to *Statistical Policy Directive No. 2: Standards and Guidelines for Statistical Surveys.* This Addendum neither removes nor replaces any of the standards and guidelines identified in *Statistical Policy Directive No. 2.* Instead, this Addendum is intended to complement and augment those standards as part of the continuing efforts of the Federal statistical system to ensure the relevance, accuracy, and objectivity of Federal statistics.

The Addendum provides seven standards for cognitive interviews conducted by, or on behalf of, the Federal government for statistical purposes, including the evaluation of a survey, instrument, or data collection method. These standards pertain to the design, conduct, analysis and publication of cognitive interview studies. The seven standards are presented individually. Accompanying guidelines represent best practices that may be useful in fulfilling the goals of the standard.

Unless explicitly noted, this document incorporates the terms and definitions in *Statistical Policy Directive No. 2: Standards and Guidelines for Statistical Surveys.* The term

"standard" denotes a methodological requirement, necessary for the study to be considered accurate and trustworthy. "Guidelines" are intended as best practices in how to interpret and fulfill the standards: they are not intended as necessities or requirements. The document is intended to provide guidance on the preferred methods for all agencies conducting cognitive interviews, with the recognition that resource or other constraints may prevent all guidelines from being followed in every study.

Overview of Cognitive Interview Methods

Cognitive interview studies investigate how survey questions perform when asked of respondents—that is, whether respondents understand the questions according to their intended design and whether respondents can provide accurate answers based on that intent. Cognitive interview studies determine respondent interpretations and detail the phenomena considered by respondents in forming their answer. Findings from cognitive interview studies can indicate whether a survey question captures the intended construct as well as identifying difficulties that respondents experience when formulating a response. As with most question evaluation methods, the goal is to minimize the variability in the data caused by aspects of data collection related to respondent characteristics (e.g., history, comprehension, motivation), interviewer characteristics (e.g., history, experience) or survey administration (e.g., mode, context).

Cognitive interviews give us insight into the variability due to the respondent's response

process, allowing us to attempt to either minimize this variability or isolate and manage it post-collection.

Cognitive interview studies are qualitative studies. Interviews generate textual data that includes explanations and examples of respondent circumstances and how those circumstances inform the question-response process. Cognitive interviews consist of one-on-one, open-ended, semi-structured interviews. The typical interview structure consists of respondents, sometimes known as participants, first answering the evaluated survey question and then a series of follow-up questions that reveal what respondents were thinking and their rationale for that specific response. For example, a common follow-up question is: "What were you thinking when you answered the question?" Through this semi-structured design, cognitive interviews provide rich, contextual insight into the ways in which respondents 1) interpret a question, 2) consider and weigh relevant aspects of their experiences and, finally, 3) formulate and report a response based on that consideration. As such, cognitive interviews provide in-depth understanding of the ways in which a question operates, the kind of phenomena that it captures, and whether and how the question will ultimately collect survey data.

Sample selection for a cognitive interview study is purposive rather than random. The intent is to select respondents who can address the objectives of the study rather than serve as a representative of the population. For example, when studying questions designed to identify persons with disabilities, the sample would likely consist of

respondents with a known disability and, to explore causes of false positive or false negative reporting, some respondents with no known disability. Analysis of cognitive interviews does not produce generalizable findings in a statistical sense, but rather, provides insight into patterns of interpretation and the potential for measurement error.

Raw data of a cognitive interview study consist of either a video or audio recording or a written transcript of the interview. As is the case for all analyses of qualitative data, the general process involves data synthesis and reduction—beginning with a large amount of textual data and resulting in conclusions that are meaningful to the ultimate purpose of the study. In addition, as previously described, cognitive interview studies can serve different purposes that pertain to question evaluation. The purposes may include:

- Identifying difficulties that respondents may experience when attempting to answer a survey question. These difficulties may occur within one of the four stages of the question response process: comprehension, retrieval, formulation, and response. The findings can provide clues as to how a question might be improved so the recognized difficulties can be reduced.
- Identifying experiences or events that respondents consider and ultimately include or exclude in their answer to a particular question. This type of study is an examination of construct validity since it identifies the actual phenomena captured by a survey question.

- Examining issues of comparability—for example, the accuracy of translations or equivalence across socio-cultural or other relevant subgroups. This type of study is an examination of potential bias since it investigates how different groups of respondents may interpret or process questions differently.

Findings from a cognitive interview study typically lead to recommendations for improving a survey question. Results are also beneficial to post-survey analysis by informing data interpretation

Requirements for Agencies

Federal agencies subject to the *Paperwork Reduction Act* are required to adhere to all standards enumerated in this Addendum. Nonetheless, OMB recognizes these standards cannot be applied uniformly or precisely in every situation. Therefore, agencies should seek guidance from OMB if contingencies arise that would make adherence to these standards infeasible for a given information collection.

These standards and guidelines are not intended as a substitute for the extensive existing literature pertaining to cognitive interview and qualitative research. When undertaking a cognitive interview study, an agency should engage knowledgeable and experienced practitioners to effectively achieve standard goals, consistent with applicable law. Persons involved should have knowledge and experience in survey design and methodology, cognitive interview and qualitative research methodology.

The standards and guidelines identified in this Addendum are not intended to be exhaustive of all efforts that an agency may undertake to ensure the quality of its cognitive interview studies. Agencies are encouraged to develop additional, more detailed standards focused on their specific survey question evaluation activities. Additionally, these standards and guidelines are based on the current state of knowledge about cognitive interview practices. Agencies are encouraged to conduct sound empirical research to strengthen the guidelines included in the document so as to further improve the quality of cognitive interview studies.

Agencies conducting surveys should also consult guidance issued by OMB entitled *Questions and Answers When Designing Surveys for Information Collections (Questions and Answers)*. Developed by OMB to assist agencies in preparing their Information Collection Requests for OMB review under the *Paperwork Reduction Act*, Questions and Answers is intended as an easy to read reference.

ADDENDUM: STANDARDS AND GUIDELINES FOR COGNITIVE INTERVIEWS

Section A.1 Methodological Plan

Standard A.1: A methodological plan must be developed prior to conducting a cognitive interview study. This includes (but is not limited to) an articulation of the study objective, sampling plan, recruitment of respondents, location of interviews, development of an interview guide, and type of analysis to be conducted.

Section A.2 Sample Selection

Standard A.2: Sample selection for a cognitive interview study must be done in a purposeful way to ensure that the respondents have the characteristics necessary to provide data required to meet the study objectives.

The following guidelines represent best practices that may be useful in fulfilling the goals of the standard:

Guideline A.2.1: *Sample Characteristics*: Respondents are identified based on their relationship or experiences with the key characteristics of the study. The composition of the intended survey population and the homogeneity of the population's experiences with the key topics or variables of interest also play a role in determining the number of subgroups included in a cognitive interview study. If the respondent population is expected to be similar in its experiences and reaction to the key variables,

there may not be a need for subgroups. If, on the other hand, there are known or suspected differences in the way in which particular populations may experience or interpret a construct, multiple subgroups would be desired. If subgroups are identified, the number of respondents within each subgroup needs to be sufficient to allow for identification of themes in question interpretation and response error.

Guideline A.2.2: *Sample size*: A sample size goal is decided at the onset of the study with the final sample size determined by the data being collected. Ongoing analysis of the data determines when "saturation" has been reached (i.e., how much new information is being collected from each participant) and, therefore, informs when interviewing may cease, even if initial sample size has not been met. On the other hand, the sample size goal may be exceeded if the point of saturation has not been reached, or if additional issues or subgroups have been identified that need to be explored to achieve study objectives.

Guideline A.2.3: *Recruitment plan*: Recruitment may include advertisements in newspapers, flyers, websites, social media, community contacts, word-of-mouth, or direct contact of previous survey respondents or members of the survey frame. Respondent selection is considered and guided by the study objectives.

Section A.3 Interview Guide

Standard A.3: An interview guide, or interview protocol, is required and must be designed to measure the processes by which a respondent

interprets and responds to a question as well as any difficulties experienced by a respondent in providing an answer. Interview guides contain the questions to be evaluated along with interviewer instructions, such as follow-up probe questions, for obtaining information needed to meet study objectives. The guide must direct the interview process so that respondents reveal how and why they answered the question as they did.

The following guidelines represent best practices that may be useful in fulfilling the goals of the standard:

Guideline A.3.1: As a means of improving questionnaires, cognitive testing is best used as an iterative process, with ongoing analysis and revisions conducted throughout the study. For example, as problems are identified with question wording, the study is paused, the results analyzed, the question–and interview protocol if necessary–revised, before testing continues. The point at which testing is stopped (and changes are final) is based on analytic findings. The researcher should work to ensure that the final product aligns with the intent of the questions.

Guideline A.3.2: Cognitive interviewers also operate as analysts within the interview. Therefore, they should have knowledge of cognitive interview and qualitative methodology. For each study, the cognitive interviewer should have a strong understanding of the research objectives, key variables and potential issues in order to formulate spontaneous follow-up questions and conduct on-the-spot analysis.

Guideline A.3.3: Individual questions are not asked in isolation, but instead operate in a larger context of the full survey administration. The cognitive testing protocol should recognize that there are context, framing, mode, or other effects that may play a role in the response process. In situations where the larger context of the survey may significantly impact the evaluation of the question, testing should mirror the intended context and administration mode. When evaluating whether a tested question should be used in a survey other than for which it was developed, the context within which the question was tested should be evaluated to determine if it adequately informs the question's anticipated performance in the proposed survey, or if additional testing is needed.

Section A.4 Analysis of Cognitive Interviews

Standard A.4: The data produced must undergo a systematic analysis. A systematic analysis ensures that no particular case is overemphasized and that findings represent the full range of responses. Analysts must examine data within interviews, across interviews (by question) and across subgroups (when appropriate given the purpose of the study) with the goal of identifying thematic patterns in question interpretations and response error.

The following guidelines represent best practices that may be useful in fulfilling the goals of the standard:

Guideline A.4.1: Cognitive interview studies are based on empirical data collected from respondent interviews. Analyses and conclusions can only be based on these data. Expert reviews are not cognitive interview data and should not be treated as such.

Guideline A.4.2: Analysis of cognitive interviews consists of data synthesis and reduction. The process can be conceptualized as five incremental steps. The number of steps taken by the analyst depends upon the particular purpose of the study. These steps are:

1. Conducting interviews, collecting and documenting the ways in which a respondent interpreted and formulated answers to the survey questions;
2. Synthesizing interview text into summaries, detailing how each respondent formulated their answers, including events or experiences considered as well as any difficulties answering the question;
3. Comparing summaries across respondents to identify common themes and to develop common themes that describe phenomena captured;
4. Comparing those themes across subgroups to identify ways in which different groups may process questions differently depending on their experiences; and
5. Making conclusions based on the common themes that depict how each question performs as well as providing explanation for the performance.

6. Preparing initial recommendations as to whether the question is fit for its intended use, or whether (and in what circumstances) further testing of alternatives is merited.

Section A.5 Transparent Analysis

Standard A.5: Analysis of cognitive interviews must be transparent such that study findings can be traced to original data collected in the cognitive interviews.

The analytic process must be transparent so that an outsider can understand and assess the legitimacy of study findings. Each step in the analytic process must be documented in a clear and accessible way, such that the findings can be traced directly back to the raw data. The level of detail at which the analytic process is described must be such that an outside researcher could replicate the analysis.

By making analytic processes transparent, readers can understand, cross-examine and judge the quality of the cognitive interview data as well as the way in which the analysis was conducted. Transparency allows the reader to trust the findings and their reputability.

The following guideline represents best practices that may be useful in fulfilling the goals of the standard:

Guideline A.5.1: A plan is prepared to store the raw data according to an agencies' record management schedule. If not available, a schedule for storing raw data for specified length of time based on the nature of the data and project should

be developed. Each agency has the legal responsibility to safeguard respondent identity and personally identifiable information, and should treat all data according to their stated security and confidentiality procedures.

Researchers should keep an audit trail—a step-by-step record illustrating how data were synthesized to produce conclusions. This trail can be a spreadsheet, text document, or other qualitative analysis software application capable of documenting the analysis process. Evidence in the form of detailed examples and quotations are written into study findings.

A report is written and made public when possible (see Standard A.7).

Section A.6 Final Reports

Standard A.6.1: The methods used, results obtained, and conclusions drawn must be documented in a final report.

Complete reporting improves both the rigor and the credibility of a study, maximizes the transparency of the analyses, and is essential for evaluating study quality. A final report offers clear and conceptually adequate descr ptions of all aspects of the study and its execution.

The following guidelines represent best practices that may be useful in fulfilling the goals of the standard:

Guideline A.6.1: It is important to document the key procedures and findings of cognitive interview studies, allowing interested parties to evaluate

the study. Table A.1 provides a list of questions addressed by the final report and provides examples of elements that fall under each item.

Table A.1. Issues Addressed in Cognitive Interview Reports

Question	Example
What is the study objective and why are the selected methods appropriate?	Original purpose(s) of the study Background/present state of knowledge Rationale for using cognitive interview method
How was the sampling done?	Description of and rationale for type of sampling (e.g., purposive) given study objective(s) Description of recruiting method Target sample (number and characteristics) Achieved sample (number and characteristics)
What data were collected, by whom, and by what methods?	Description of interview guide (include as an attachment if possible) Details on the interviewer(s), interview location, interview length, etc. Method of note taking, session recording, use of transcripts Changes to methods during testing

How was the analysis conducted?	Procedures for summarizing data, drawing conclusions and making recommendations Discussion of sub-group comparisons
What results are presented?	General overview of responses Identification/exploration of key findings or themes Provision of illustrative quotes or examples Summary of patterns and trends Discussion and explanation of counterexamples Recommendations, future research, etc.
How credible and transferable are the findings?	Description of relevance of findings to study objectives Links to data and/or methods documentation Discussion of sample coverage issues Identification of other study limitations

Guideline A.6.2: The content and format of cognitive interview study reports may vary somewhat by researcher and project, but they generally contain the following elements:

- Study title, author(s), and date of report;
- Executive summary: concise précis of objectives, procedures, and key findings;
- Introduction: for example, background information about the survey or topic and a statement of the cognitive interview study purpose;
- Methods: description of procedures for sampling/recruiting, data collection, and data analysis;
- Findings: question-by-question review, identification of common themes, consideration of counterexamples and, possibly, recommendations;
- Discussion: review of key findings, study limitations, ideas for future research; and
- Addenda: interview protocol and supplemental methodological documentation.

Section A.7 Reporting Results

Standard A.7: Final reports must be made available to the public if cognitive study results are referenced in publications or data collection documentation.

The following guideline represents best practices that may be useful in fulfilling the goals of the standard:

Guideline A.7.1: Survey data documentation, including descriptions of the data collection

process, survey forms, and information about the available data, should include links to cognitive testing reports. Reports are linked to survey data documentation. This can be done directly on the website of the survey for which the cognitive interviews were conducted, or another public website or database.

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[COVER]

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Letter Report on the 2020 Census

[IMAGE]

DETAILS

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Task Force on the 2020 Census; Committee on National Statistics; Division of Behavioral and Social Sciences and Education; National Academies of Sciences, Engineering, and Medicine

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[LETTERHEAD]

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DIVISION OF BEHAVIORAL AND SOCIAL SCIENCES AND EDUCATION
Committee on National Statistics
Task Force on the 2020 Census

August 7, 2018

Jennifer Jessup
Departmental Paperwork Clearance Officer
U.S. Department of Commerce, Room 6616
14th and Constitution Avenue NW
Washington, DC 20230

RE: FR Doc. 2018-12365, Proposed Information Collection; Comment Request; 2020 Census. Docket number USBC- 2018-0005.

Dear Ms. Jessup:

The National Academies of Sciences, Engineering, and Medicine's Committee on National Statistics (CNSTAT) established a Task Force on the 2020 Census to consider challenges for the Census Bureau in conducting the 2020 decennial census. CNSTAT, which was established in 1972, has provided assistance to the country on the methods used in the decennial census at the behest of Congress or the U.S. Department of Commerce (DOC) most years since the 1980 census. Our work has included panels that monitored the conduct of the 2000 and 2010

censuses as they occurred and that helped structure this decade's development and testing work for the 2020 census. CNSTAT studies have also examined the American Community Survey (ACS) since its early pilot-testing days and throughout its full-scale operation as replacement for the "long-form sample" of households in the 2010 census (see Attachment E). In addition, since 1992, CNSTAT, as part of its core mission, has issued regular editions of its *Principles and Practices for a Federal Statistical Agency (P&P)*, identifying and affirming the standards that statistical agencies should meet in order to function effectively as a source of high-quality, objective information to inform policy makers and the public (National Academies of Sciences, Engineering, and Medicine, 2017c; see attachment D). *P&P* has been used and cited by the U.S. Office of Management and Budget in statistical policy directives and by the U.S. Government Accountability Office in reviews of statistical programs. *P&P* has also been endorsed by the board of the American Statistical Association.

The conduct of an effective 2020 census is necessary for the functioning of the U.S. government as a whole, as required by the Constitution (Article I, Section 2). High-quality census-based information is essential, not only for reapportionment of the U.S. House of Representatives and redistricting of congressional, state, and local legislative districts, but also for many other governmental functions, including the allocation of federal funds to states and localities. Census statistical information is also widely used by the business community, nongovernmental organizations, researchers, the media, and the

general public (U.S. Department of Commerce, 2014). Consequently, careful planning and testing of the methods to be used in each census is of paramount importance. The proposed 2020 census design incorporates innovations in key areas, including those recommended as priority areas by our Panel to Review the 2010 Census (National Research Council, 2011)—reengineering field operations, making fuller use of administrative records/third party data, optimizing self-response (including Internet response), and reengineering address canvassing. More generally, the design has been developed with the rigor commensurate with recent U.S. censuses.

At this stage in the life cycle of a decennial census, the Census Bureau would ordinarily be focused on fine-tuning systems and operations and not on making significant changes to its plans. The Task Force concluded that the DOC's recent decision to add a question on citizenship status to the 2020 census is inconsistent with the "proper performance of the functions" of the Census Bureau, which was one of the areas where the DOC requested public comments in the Federal Register notice, as required by the Paperwork Reduction Act (Pub. L. No. 104-13). This conclusion rests on three principal arguments:

1. *The American Community Survey already meets the stated need for citizenship data:* The Secretary's decision memo of March 26, 2018, discounts the current collection of citizenship data in the ACS-a survey, like its predecessor long-form sample in the decennial census, that is directly intended to address critical information collection needs while mitigating

undue burden on the public. ACS data are expressly designed to facilitate the analysis and comparisons of characteristics of specific subpopulations, and they have been used effectively for enforcement of protections in the Voting Rights Act, which is the stated reason for adding the citizenship question to the 2020 decennial census.

2. *Adding the citizenship question without proper testing will, in our judgment, impair the quality of the 2020 census as a whole:* The Secretary's decision memorandum characterizes the issue as "reinstatement" of a citizenship question. Yet, each census is sufficiently different from prior censuses that a more accurate characterization is that a new question is being added to the census but without the rigorous testing and proper consideration of consequences that are expected in proper survey and statistical practice. According to the Census Bureau's own analysis, addition of the citizenship question could adversely affect the quality and the cost of the 2020 census.

3. *Adding the citizenship question and using the method described in the Secretary's memo and the Census Bureau's review would create a new population register, which has unclear statistical purposes and which could not, under current law, be used for nonstatistical purposes, such as law enforcement against individuals, and still comport with the mission of the Census Bureau:* The Secretary's decision memorandum suggests an intent to use census responses to "correct" or validate

citizenship status in administrative records data, and the documentation of the Secretary's decision directly states that the option ultimately chosen by the Secretary was intended to use 2020 census responses to supplement a "comprehensive statistical reference list of current U.S. citizens," which would then continue as a regularly updated citizenship registry. The uses of this registry are not detailed, and therefore, the practical utility and need for the collection of information and new active citizenship registry has not been demonstrated. Currently, any "nonstatistical uses" of census data, which include law enforcement, adjudication, and using census responses in any other manner to directly affect the rights, benefits, and privileges of an individual, are prohibited by federal law (13 U.S.C. § 9), and are contrary to the functions of a statistical agency.

The American Community Survey Already Meets the Stated Need for Citizenship Data

In an attached narrative (see Attachment C), we summarize the history of collection of citizenship information in the census and the ACS. This material underscores a critical point: The citizenship item has *never* been collected on a complete population basis since the U.S. Department of Justice became responsible for enforcing voting equity challenges under Section 2 of the Voting Rights Act of 1965. In its December 12, 2017, request to the Census Bureau, the Justice Department asserted that its Section 2 enforcement abilities would be improved through

the generation of citizenship data at the census block level, hence the need to include the question on a complete population basis in the 2020 census.

Yet, data at that level of precision were not deemed necessary in the 1970, 1980, 1990, 2000, and 2010 censuses; apparently, all parties deemed it sufficient to include citizenship on only the long-form questionnaire in the 1970-2000 censuses (this, after the topic was eliminated completely in the 1960 census except for New York State and Puerto Rico). And it was deemed sufficient for Voting Rights Act adjudication to include citizenship in the ACS when the survey began its operations and when it replaced the long-form sample in 2010. Indeed, we note that the complete "administrative record" of the Secretary of Commerce's decision on the citizenship question includes several memoranda from the Department of Justice indicating continued support for the collection of citizenship data via the ACS through the last comprehensive ACS content review done in 2014 (U.S. Department of Commerce, 2018).

At present, the ACS collects citizenship voting-age population (CVAP) data that are measured with consistently high quality nationwide and able to be tabulated for small geographic areas. Indeed, the ACS data are of higher quality, measured by nonresponse to individual items, than the long-form sample data from the 2000 census (see National Research Council, 2007, Ch. 2-B). As a result, the ACS has become an essential tool in adjudicating Voting Rights Act disputes of various sorts. Section 2 of the Voting Rights Act (codified at 52 U.S.C. § 10101) prohibits practices or procedures that would impair or dilute the right of

a protected minority group to vote. In this context, the U.S. Supreme Court has held (*Thornburg v. Gingles*, 478 U.S. 30, 1986) that a plaintiff claiming Section 2 deprivation must demonstrate (along with two other tests) that the minority group in question is simultaneously large enough in population yet geographically compact enough to represent the majority in a single-member district. Such determinations have come to rely intensively on ACS CVAP data.

Likewise, Section 203 of the Voting Rights Act requires that voting materials be made available in non-English languages in jurisdictions for which primary use of a foreign language exceeds a particular threshold level. These determinations are arguably more sensitive and difficult to make than a strict tabulation by citizenship status—requiring, as they do, disaggregation of data by citizenship, age, and primary language spoken at home. Yet, since the section's enactment in 1975 (P.L. 94-73), Congress has explicitly vested authority in the director of the Census Bureau to make such determinations, emphasizing that the director's determinations "shall be effective upon publication in the *Federal Register* and shall not be subject to review in any court." In 2006, the law was amended to explicitly make "the 2010 American Community Survey census data and subsequent American Community Survey data in 5-year increments, or comparable census data" the source of Section 203 determinations (120 Stat. 581). CNSTAT conducted a workshop in June 2012, which produced the volume *Benefits, Burdens, and Prospects of the American Community Survey: Summary of a Workshop* (National Research Council, 2013), that included

expert presentations and case studies of the ACS in Voting Rights Act and related challenges-all noting the advantages of the more timely ACS data and its analytical richness relative to decennial "snapshots" of characteristics like citizenship. As a final point, statistical modeling has been successfully used in the ACS for the 2010 Census round of data collection to improve the precision of estimates for small communities and small geographic areas for purposes of Section 203 of the Voting Rights Act. Similarly, state-of-the-art statistical models using ACS data produced the 2016 Section 203 determinations, successfully implementing these requirements throughout the decade, and there is no reason to expect that modeling could not be successfully used to produce valid estimates for other sections of the act.

Adding the Citizenship Question Without Proper Testing Will Impair the Quality of the 2020 Census as a Whole

That a citizenship question has been included in decennial censuses as early as 1820 or in the ACS for a decade does not constitute sufficient evidence to argue that it is a tested and proven method of measurement for the 2020 census. The attached historical material shows that "citizenship" (or, more commonly in the 19th century censuses, naturalization status) information has been collected over the decade in different ways, including different modes of administration (e.g., personal interview, self-response). One of our consensus study reports (*Envisioning the 2020 Census*; National Research Council, 2010), a particularly thorough examination of the Census Bureau's longstanding research and development

process, demonstrates that even small changes in question wording and in mode of administration can have significant effects on responses and on decisions whether to respond, and that the Census Bureau has properly subjected such changes to years of repeated testing and evaluation. The proposed addition of the citizenship question to the 2020 census has not been subjected to the same scrutiny, and it has not been assessed under conditions that resemble the actual decennial census to the greatest extent possible. Most notably, it was added too late to be included in the current 2018 End-to-End Census Test, the final trial run in the field for the 2020 census.

Further, the addition of a question to a decennial census is not simply a matter of a few more words on the printed page or an additional question in the Internet form, nor is there evidence that detrimental effects on census participation (as the closing passage of the Secretary's decision memorandum argues) can be mitigated simply by placing the new question at the end of the questionnaire. Respondents can see all of the questions on the paper form before completing it, and they can also go back to previous questions on the Internet form after seeing the citizenship question. Furthermore, as the listing of dozens of constituent operations and numerous specific information collection documents in the Census Bureau's *Federal Register* notice and the Census Bureau's operational plan for the 2020 census make clear, the 2020 census is much more than a single, simple questionnaire:

- The vast majority of households will receive an invitation in the mail to respond via the Internet, although they may instead request a paper questionnaire to fill in and mail back. Households in areas where broadband Internet connection may be spotty will receive both Internet login information and a paper questionnaire in a single mailing, and households in predominantly rural areas will have their questionnaire packet dropped off by census enumerators. Both paper and electronic questionnaires would need to add the citizenship item. Until and unless proven by testing, it cannot be assumed that respondents would react the same way to any question, citizenship or other, on a paper as on an electronic form. With respect to a citizenship question, specifically, it is not known how many respondents to either the paper or electronic questionnaire would leave it blank.
- Because many households will not respond to the 2020 Census, either via the Internet or by mail (and the extent of nonresponse could be increased due to publicity about the citizenship item), the citizenship question would also have to be included on the Enumerator Questionnaire used in non-response follow-up (NRFU) operations. The 2020 NRFU will be conducted primarily through handheld mobile devices and not paper questionnaires as in previous censuses. (Enumerators will also use paper questionnaires to interview households in remote areas, such as remote Alaska.) Though an objective of the 2020 census is to reduce the

NRFU field workload through recourse to administrative records data from other federal government sources, the quality of citizenship information in those administrative data is known (and acknowledged, explicitly, in the Secretary's decision memorandum) to have issues. And even with the use of administrative records, enumerators will be making millions of NRFU field visits throughout the country. It is not known the extent to which publicity about the citizenship question would induce households to not provide this information or avoid the interview entirely.

- The citizenship question would also have to be included in the electronic version of the questionnaire to be used by operators on the Census Questionnaire Assistance (CQA) phone line. CQA is partially meant as a mechanism for persons with limited English proficiency to request a questionnaire or be interviewed, and it is not known the extent to which the presence of a citizenship question may undercut the use and effectiveness of that operation.
- Along with all the other questions, the citizenship question would also have to be included in the foreign-language versions of the paper and electronic questionnaires, as well as translated and described in dozens of language assistance guides—raising the possibility of cultural or linguistic misinterpretations.
- The citizenship question would also have to be included in quality assurance (QA)

reinterviewing, a routine check of the veracity of enumerators' work. Though the *Federal Register* notice describes a streamlined QA approach based on initial attempts to verify only household roster/name information by telephone, millions of households will still be subject to QA reinterviewing.

- The citizenship question would also have to be included on questionnaires for special populations, such as residents of group quarters.
- Finally, the citizenship question would need to be included on the postenumeration survey (PES) questionnaire, involving in-person interviews with an independent sample in order to generate estimates of net undercount or overcount in the census.

The ACS has included a citizenship question with no apparent problems to date. However, this use is insufficient evidence of how a citizenship question would function in the 2020 census. The ACS contains scores of questions, and the salience of the citizenship question to the overall request for participation in the ACS is minimal. In contrast, the 2020 census with a citizenship question would include only 11 questions in total; moreover, the salience of the citizenship question has risen to the highest level of all other questions, given the publicity surrounding the Secretary's decision memorandum. Expecting that such publicity would continue into the census period likely means that the decision to participate in the census would be driven by attitudes toward that question. Such a phenomenon could affect the "actual enumeration"

of the full population that the Constitution requires.

The Secretary's memo notes that there is not clear evidence that addition of the citizenship question would depress response. However, because the citizenship question has not been tested in the proper context or with the proper scrutiny, the burden of proof would seem to lie with the DOC to establish that the addition of the question would *not* degrade the quality and utility of the decennial census.

Given a lack of testing, we are in no better position than anyone else to estimate how much the citizenship question's addition would affect response in the 2020 census. However, lack of evidence of an effect is not evidence of the lack of any effect. The presence of the question certainly could not improve response, and our decades of census observation suggests numerous predictable, deleterious effects. Indeed, the mere knowledge of the citizenship question's existence could put a damper on willingness to respond to the census at all, whether online or on paper, or could induce households to leave the citizenship question blank.

The Census Bureau has procedures for imputing values for missing responses and for imputing whole households when absolutely necessary. However, the necessary modifications to these procedures to handle the citizenship question would be untested and could raise doubts about the quality of the data should levels of nonresponse be greater than in past censuses.

Of key importance is that the Census Bureau

relies on the cooperation of the public to participate in the decennial census and has effectively employed advertising and outreach through partnerships with localities and local organizations in the 2000 and 2010 censuses. These efforts would be strained and impaired with many constituencies due to the presence and surrounding adverse publicity about the citizenship question. Enumerators could also experience additional difficulties in obtaining cooperation when they visit nonresponding households and would need to be trained for such an eventuality.

The costs of the census are heavily driven by the level of the participation generated by the initial request. If households do not respond initially, human resources are required to seek participation. In the 2010 census, 600,000 enumerators were used for this task. With a lower initial participation rate that might occur if the citizenship question were incorporated, many more enumerators would be needed, and census costs would almost certainly increase, perhaps to a major degree. More important, census quality would be affected, not only because enumerators could encounter difficulties in obtaining answers to the citizenship question, but also because they might not be able to obtain an interview at all, leading to a likely increase in "last-resort" or proxy enumeration for such cases (e.g., interviewing a neighbor or landlord) or to the need for computer-based imputation.

Should enumerators encounter resistance, they may well back off from asking about citizenship. Indeed, in the 2000 census, there is evidence that

enumerators, while generally successful in obtaining answers to questions on household relationship, race/ethnicity, and gender, were less successful in obtaining answers to other questions on the census long form, like citizenship (National Research Council 2004, App. H). As a consequence, the quality of results for the census as a whole—including responses to other questions besides citizenship—would likely decrease because of the increased levels of imputation and proxy response. Moreover, the decrease would almost certainly affect some demographic subgroups, including minorities, more than others, based on the decades of evidence about differential coverage errors in the census (National Research Council, 2004, Ch. 5; 2010, Ch. 2-B). The quality of the core tool by which we learn how well a census has done in coverage—the postenumeration survey—would likely be compromised as well, for the same reasons. In short, then, our decades of census observation strongly suggests that the addition of the citizenship question at this stage, without proper testing and consideration of all its likely effects, would be an unwise attempt to increase the perceived precision of one data item to the detriment of the quality of the census as a whole.

Adding the Citizenship Question and Using the Method Described in the Secretary's Memo and the Census Bureau's Review Would Create a New Population Register, Which Has Unclear Statistical Purposes and Which Could Not, Under Current Law, Be Used for Nonstatistical Purposes, Such as Law Enforcement Against Individuals, and Still Comport with the Mission of the Census Bureau

The Secretary's decision memorandum rejects the option of relying solely on administrative or third-party data for citizenship, citing then-unpublished Census Bureau analysis of matched 2010 census/ACS and administrative records data showing (in the Secretary's words) that "when non-citizens respond to long form or ACS questions on citizenship, they inaccurately mark 'citizen' about 30 percent of the time" and noting that use of the records alone would still require imputation of citizenship status for about 10 percent of the population. What the Secretary settled on was a hybrid approach, called "Alternative D," of adding citizenship to the 2020 census questionnaire while also directing the Census Bureau to "use the two years remaining" before the census to improve its administrative-records resources for measuring citizenship. In particular, the Secretary directed the Bureau "to determine the best means to compare the decennial census responses with administrative records" in order to "determine the inaccurate response rate for citizens and non-citizens" alike.

The Secretary's memorandum does not provide a full description of Alternative D. However, at page

001309 of the complete administrative record related to the Secretary's decision (U.S. Department of Commerce 2018), the Census Bureau's analysis describes Alternative D as follows:

> Administrative data from the Social Security Administration (SSA), Internal Revenue Service (IRS), U.S. Citizenship and Immigration Services (USCIS), and the State Department would be used to create a comprehensive statistical reference list of current U.S. citizens. Nevertheless, there will be some persons for whom no administrative data are available. To obtain citizenship information for this sub-population, a citizenship question would be added to the 2020 Census questionnaire. The combined administrative record and 2020 Census data would be used to produce baseline citizenship statistics by 2021. Any U.S. citizens appearing in administrative data after the version created for the 2020 Census would be added to the comprehensive statistical reference list. There would be no plan to include a citizenship question on future Decennial Censuses or American Community Surveys. The comprehensive statistical reference list, built from administrative records and augmented by the 2020 Census answers would be used instead. The comprehensive statistical reference list would be kept current, gradually replacing almost all respondent-provided data with verified citizenship status data.

So described, the chosen Alternative D is not a "reinstatement" of a citizenship question to the decennial census for statistical purposes but rather the intended use of census responses as seed data to construct an ongoing citizenship status registry, something never before proposed as a task for the Census Bureau, an agency solely devoted to statistical uses of data.

Although some European countries have population registries, the United States has resisted the creation of an individual-level population register for statistical or other purposes. Such a register would be a new system of records under the Privacy Act (5 U.S.C. §552a). Its merits, limitations, uses, costs, and privacy implications would need to be thoroughly and publicly discussed, including whether the administrative records are sufficiently accurate to identify citizens (and by implication noncitizens) and assign them a place of residence, given the potential for adverse consequences in cases of misclassification.

The Census Bureau has the technical capabilities to construct such an administrative records system from the many existing data sources that are described in a predecisional Census Bureau memorandum (U.S. Census Bureau, 2018). Indeed, the Census Bureau has for many years obtained and used administrative records from other federal program agencies to produce and enhance statistics, and we have argued in several reports that it should make greater use of administrative records in conjunction with survey data and other sources for improving the quality, timeliness, and cost-

effectiveness of many of its statistical programs (National Academies of Sciences, Engineering, and Medicine, 2017a, 2017b, 2017c). However, in none of this work does the Census Bureau create or maintain or provide access to administrative records systems for anything other than statistical purposes.

A core tenet of U.S. census law—paraphrased by the Census Bureau in this *Federal Register* notice—is that information collected by the Census Bureau must be used only for "the statistical purposes for which it is supplied" (13 U.S.C. § 9). The sixth edition of *Principles and Practices for a Federal Statistical Agency* defines statistical purposes to include "description, evaluation, analysis, or inference for groups of individuals or other units . . . and not interest in or identification of an individual person or economic unit. A statistical agency . . . does not use [the data it collects] for nonstatistical purposes, such as regulation or law enforcement" (National Academies of Sciences, Engineering, and Medicine, 2017c, p. 12).

To prevent such nonstatistical use and to protect the confidentiality of individual census responses as mandated in Section 9 of Title 13 of the U.S. Code, the Census Bureau has subjected the block-level data that it has provided to the states for redistricting since the 1970 census to "data swapping" and other methods to protect against disclosure. Augmentation of these block-level data with citizenship information would require the Census Bureau to use additional disclosure protection methods that could impair the accuracy of the block-level information,

thereby undercutting the avowed purpose of collecting citizenship on the census in the first place. Although the Census Bureau is investigating modern methods that may make it possible to report useable block-level information, these methods require considerable evaluation and testing before they could be deployed.

Relatedly, it is not clear why the Census Bureau would need to create a "comprehensive statistical reference list" based on administrative data and census data simply to produce citizenship statistics for the Department of Justice when it does not use such an approach for any other population characteristics or for any other federal agency. Because there is no apparent statistical justification for the Census Bureau to create this citizenship registry, legitimate concerns arise that this information could somehow be used for law enforcement, adjudicatory, or other nonstatistical purposes in some manner, which would undermine the mission of the Census Bureau (as well as violate Title 13, Section 9).

Principles and Practices for a Federal Statistical Agency (National Academies of Sciences, Engineering, and Medicine, 2017c), identifies four principles for effective operation of a statistical agency like the Census Bureau:

- Principle 1: A federal statistical agency must be in a position to provide objective, accurate, and timely information that is relevant to issues of public policy.
- Principle 2: A federal statistical agency must have credibility with those who use its data and information.

- Principle 3: A federal statistical agency must have the trust of those whose information it obtains.
- Principle 4: A federal statistical agency must be independent from political and other undue external influence in developing, producing, and disseminating statistics.

Proceeding with the inclusion of the citizenship question to the 2020 census as currently planned, without proper preliminary testing and analysis, without a clear demonstration of the need for the information beyond what is already collected through the ACS, and without a sound justification for creating a "comprehensive statistical reference list," goes against these principles. This endeavor risks undermining the credibility of the Census Bureau and the decennial census, the trust of its respondents, and the independence of the Census Bureau's professional staff to develop, produce, and disseminate objective information while protecting confidentiality of respondents.

In conclusion, citizenship is an important public policy topic and worthy of high-quality data collection, and this is already being accomplished through the ACS. The addition of the citizenship question to the 2020 decennial census questionnaire, as described in the *Federal Register* notice and the Secretary's decision memo, does not demonstrate practical utility as required by the Paperwork Reduction Act, and the use of the census data to seed a "statistical reference list" raises concerns about whether the intended uses comport with the mission of a federal statistical agency. The late-stage insertion of a new and

untested question in the 2020 census would almost certainly have damaging effects on the 2020 decennial census.

Sincerely,

Committee on National Statistics' Task Force on the 2020 Census

Attachment A	Membership of the CNSTAT Task Force on the 2020 Census
Attachment B	Reviewer Acknowledgments
Attachment C	Historical Treatment of Citizenship in the Decennial Census and the American Community Survey
Attachment D	References
Attachment E	Committee on National Statistics' Report on the Decennial Census and the American Community Survey

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Attachment B: Reviewer Acknowledgments

This Consensus Study Report has been reviewed in draft form by individuals chosen for their diverse perspectives and technical expertise. The purpose of this independent review is to provide candid and critical comments that will assist the National Academies of Sciences, Engineering, and Medicine in making each published report as sound as possible and to ensure that it meets the institutional standards for quality, objectivity, evidence, and responsiveness to the study charge. The review comments and draft manuscript remain confidential to protect the integrity of the deliberative process.

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Although the reviewers listed above provided many constructive comments and suggestions, they were not asked to endorse the conclusions or recommendations of this report, nor did they see the final draft before its release. The review of this report was overseen by Alicia Carriquiry, Department of Statistics, Iowa State University. She was responsible for making certain that an independent examination of this report was carried out in accordance with the standards of the National Academies and that all review comments were carefully considered. Responsibility for the final content rests entirely with the authoring panel and the National Academies.

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Attachment C: Historical Treatment of Citizenship in the Decennial Census and the American Community Survey

Earliest U.S. Decennial Censuses

- *Pre-1820:* Citizenship not included in the act prescribing the first U.S. decennial census in 1790. During debate of the act to authorize the 1800 census, Congress received memorials from the American Philosophical Society (signed by the society's president, Thomas Jefferson, then serving as vice president of the United States and who had overseen the 1790 census as secretary of state) and the Connecticut Academy of Arts and Sciences. Both argued for significant expansion in the topic coverage of the census—including request for a count of "the respective numbers of native citizens, citizens of foreign birth, and of aliens" or "the number of natives and of persons not born in the United States" (Wright and Hunt, 1900, pp. 19-20). However, Congress did not act on the advice.
- *First Inclusion, 1820*: Household count of "Foreigners not naturalized" added to the census schedule by authorizing act (3 Stat. 550). Marshals were instructed that—"subsidiary" to obtaining the aggregate population count—the purpose of the census is to "ascertain in detail the proportional numbers of which [that population] is composed," including (among numerous other characteristics) "as citizens or foreigners" (Wright and Hunt, 1900, p. 133).
- *1830*: Citizenship item revised to a household

count of "ALIENS—Foreigners not naturalized", applicable only to "White persons included in the foregoing" age/sex categories (4 Stat. 389). The item was dropped from the act authorizing the 1840 census and not reinstated for the 1850 census, whose authorizing law also governed the 1860 census.

Resurgence, and Evolution as Naturalization Question

- *1870*: Under the heading "Constitutional relations, "two columns directed enumerators to record tallies of "male citizens of United States of 21 years of age and upwards." one the total such count and the second being those "whose right to vote is denied or abridged on other grounds than rebellion or other crime" (Wright and Hunt, 1900, p. 155). Technically, the 1870 census was operated under the law authorizing the 1850 census, because the two chambers of Congress deadlocked on passing a new census act in sufficient time. However, the 1850 law did not specify a precise list of questions, which gave 1870 census officials the license to add or revise some data items—and the ratification of the Fourteenth Amendment prompted the citizenship questions. The instructions to marshals highlighted the importance of the items: "Upon the answers to the questions under this [Constitutional Relations] head will depend the distribution of representative power in the General Government. It is therefore imperative that this part of the enumeration should be performed with

absolute accuracy" (Wright and Hunt, 1900, p. 158). The act for the 1880 census retained an item added in 1870 on the place of birth of each person's parents, but omitted the specific citizenship questions.

- *1890*: Citizenship returned to the census schedule/questionnaire, but indirectly. Enumerators were directed to record "place of birth" of each person, their father, and their mother. In all three cases, the directive was to name the state/territory if born in the United States and the country if not. "If the person, or father, or mother were born in a foreign country of American parents, write the name of the country and also the words American Citizen." "At Sea" was also permitted as a response. "Only those adult males of foreign birth who are 21 years of age or over" were to be asked three questions about naturalization: number of years in the United States; whether naturalized (yes or no); and "whether naturalization papers have been taken out." (Wright and Hunt, 1900, p. 188).
- *1900*: Population questionnaire included three columns under the heading "Citizenship": "Year of immigration to the United States," "Number of years in the United States," and "Naturalization" (U.S. Bureau of the Census, 1973, p. 94). Per the instructions to enumerators, the naturalization question "applies only to foreign-born males 21 years of age and over." "If he was born abroad, and has taken no steps toward becoming an American citizen, write 'Al' (for alien). If he has declared his intention to become an American citizen

and taken out his 'first' papers, write 'Pa' (for papers). If he has become a full citizen by taking out second or final papers of naturalization, write 'Na' (for naturalized)" (Census Office, 1900, p. 31). Moreover, the person's place of birth was retained as a question, reinstating the instruction to write "Am. cit." for "American citizen" for instances of persons "born abroad of American parents" (Census Office, 1900, p. 30). The act authorizing the 1900 census stipulated that "whether alien or naturalized" should be included among the questions, and deferred to "the discretion of the Director" on "the construction and form and number of inquiries necessary" to secure the information required by law (30 Stat. 1015).

- *1910*: Citizenship content reduced to two columns, "Year of immigration to the United States" and "Whether naturalized or alien" (U.S. Bureau of the Census, 1973, p.105). Data entry for the "Whether naturalized or alien" column used the same codes as the "Naturalization" item in 1900 and the question was still applicable only to foreign-born males age 21 or older. "Am. cit." was still to be used in the place of birth question for persons born abroad of American parents (1910 Instructions to Enumerators, pp. 30-31).
- *1920*: Three columns, "Year of immigration to the United States," "Naturalized or alien," and "If naturalized, year of naturalization" (U.S. Bureau of the Census, 1973, p.138), with "Naturalized or alien" using the same "Na"/"Pa"/"Al" codes as 1900. However, the

"Naturalized or alien" question was expanded in scope to "appl[y] to all foreign-born persons, male and female, of whatever age" (1920 Instructions to Enumerators, p. 29).

- *1930*: "Year of immigration to the United States" and "Naturalization" columns, with "Whether able to speak English" added under a "Citizenship, Etc." heading (U.S. Bureau of the Census, 1973, p.147). Codes for "Naturalization" remained the same, though the enumerator instructions included detail on how to handle changes in naturalization policy enacted in 1922 (by which foreign-born women no longer acquired citizenship automatically through naturalization of a husband (1930 Instructions to Enumerators, p. 31).
- *1940*: Single column included for "Citizenship of the foreign born" (U.S. Bureau of the Census, 1973:156), using same codes as 1920 along with "Am Cit" for American citizen born abroad (1940 Instructions to Enumerators, p. 47).
- *1950*: Single column "If foreign born—Is he naturalized?," with instructions to code "Yes, no, or AP for born abroad of American parents" (U.S. Bureau of the Census, 1973, p.164).

1960 Revision, and the Long-Form-Sample Era

- *1960*: Citizenship questions were only asked of residents in New York State and Puerto Rico in the 1960 census; the collection was done in New York "at the expense of the

State" in order "to meet State constitutional requirements for State legislative apportionment" (1960 Procedural History, pp. 9-10). One question asked "Where was this person born?", with responses "U.S.", "Puerto Rico", and "Elsewhere," while a follow-up asked "If *not* born in U.S. or Puerto Rico—Is he a U.S. citizen?" (yes/no response; U.S. Bureau of the Census, 1973, p. 168).

- *1970*: The 1970 census was the first to fully adopt the concept of a "short-form" questionnaire asked of every household and a "*long-form*" questionnaire containing more detailed questions to be asked only of a sample of the population. In fact, the 1970 census included two *long-form* samples: a 15-percent sample for which data was deemed necessary in very fine geographic detail (after consultation with federal agencies and other stakeholders), and a 5-percent sample asking for information on characteristics to inform analysis at coarser levels of geography. A two-part citizenship/naturalization question was included on this second, 5-percent *long-form*-sample questionnaire (1970 Procedural History, pp. 15-16). "For persons born in a foreign country", question 16a asked "Is this person naturalized?", with responses "Yes, naturalized", "No, alien", and "Born abroad of American parents", while 16b asked "When did he come to the United States to stay?" with nine year-range categories (U.S. Bureau of the Census, 1973, p. 173).

- *1980*: The 1980 census *long-form*-sample questionnaire included a revised version of the 1970 question. "If this person was born in a foreign country—", question 12a asked "is this person a naturalized citizen of the United States?" (responses "Yes, a naturalized citizen," " No, not a citizen," or "Born abroad of American parents) and question 12b asked "When did this person come to the United States to stay?" with six year-range categories (U.S. Census Bureau, 2002, p. 85). The 1980 census *long-form* sample covered roughly 19 percent of households.

Modern Question, and the American Community Survey (ACS) Era

- *1990:* The citizenship question took its current, basic form in the 1990 census *long-form* questionnaire, item 9 of which asked "Is this person a CITIZEN of the United States?" Response categories were "Yes, born in the United States;" "Yes, born in Puerto Rico, Guam, the U.S. Virgin Islands, or Northern Marianas;" "Yes, born abroad of American parent or parents;" "Yes, U.S. citizen by naturalization", and "No, not a U.S. citizen." The follow-up question 10 asked "When did this person come to the United States to stay?" with 10 year-range categories (U.S. Census Bureau, 2002, p. 92). The 1990 census long-from sample was roughly a 1-in-6, 16 percent, sample of households.
- *1996:* The pilot version of the American Community Survey (ACS) replicated the citizenship question from the 1990 census.

- *2000:* The 2000 census *long-form* questionnaire repeated the 1990 model with only some minor grammatical or stylistic fixes in the main question (now numbered 13), but the follow-up question "When did this person come to live in the United States?" asked for the year to be written in 4 boxes (U.S. Census Bureau, 2002, p. 101). When the slight fixes (i.e., revising "American parent(s)" to "American parent or parents") were finalized for the 2000 census, the question was revised accordingly in the prototype ACS (including the Census 2000 Supplementary Survey conducted alongside the 2000 census that gave the ACS nationwide coverage). The question continued in this form in the ACS through 2007. Sampling rates for the 1980 census *long-form* varied by location (e.g., including additional sample in counties or places with small estimated populations) but averaged the same 1-in-6 rate sample of households.
- *2008–present, including question planned for use in the 2020 census:* Minor style revisions (putting "CITIZEN" in lower case and replacing "American parent" with "U.S. citizen parent"), and requesting the year of naturalization, gave the citizenship question its current form in the ACS. The question asks "Is this person a citizen of the United States?" with responses "Yes, born in the United States;" "Yes, born in Puerto Rico, Guam, the U.S. Virgin Islands, or Northern Marianas;" "Yes, born abroad of U.S. citizen parent or parents;" "Yes, U.S. citizen by

naturalization" (respondent is prompted for year of naturalization); and "No, not a U.S. citizen."

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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18 Civ. 2921 (JMF)

STATES OF NEW YORK, *et al.*,

Plaintiffs,

—v.—

UNITED STATES DEPARTMENT OF COMMERCE, *et al.*,

Defendants.

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18 Civ. 5025 (JMF)

NEW YORK IMMIGRATION COALITION, *et al.*,

Consolidated Plaintiffs,

—v.—

UNITED STATES DEPARTMENT OF COMMERCE, *et al.*,

Defendants.

Argument

New York, N.Y
July 3, 2018
9:30 a.m.

Before:

HON. JESSE M. FURMAN,

District Judge

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MR. SHUMATE: Your Honor, I think under either standard the plaintiffs' claims will fail. I think the substantial risk test involves — the cases that I have seen it will have involved cases involving risk of Food and Drug enforcement, or cases where there's a risk that the government may institute prosecution, something like that.

The far more accepted test is certainly impending injury. Either test, the plaintiffs can't show that there's a substantial risk that their injuries will ultimately occur because of these speculative chain of inferences that they have to rely on to tie the addition of a question on a form to their ultimate injury here, which is a loss of federal funding.

THE COURT: Are not they basing that inference on statements of the government itself and former and current government officials?

In other words, the government itself has said that adding a citizenship question will depress

response rates. They've alleged in the complaint that there are states and counties and cities that have a high incidence of immigrants and it, therefore, would seem to follow that it would be particularly depressed in those states.

At this stage in the proceedings, doesn't it demand too much to expect them to be able to prove concretely what the actual differential response rate is going to be and what the concrete implications of that are going to be?

MR. SHUMATE: Your Honor, they don't have to prove it concretely. But those allegations that they're pointing to only go to the initial response rate.

There's always been an undercount in the census in terms of the initial response rate. I think in the 2010 census it was 63 percent of the individuals responded to the initial census questioning. So I think that's what the individuals — the Census Bureau are referring to, that there may be a drop in the initial response rate. But there are no allegations that the Census Bureau's follow-up operations, which are quite extensive, that those will fail. The only allegation that they pointed to, I think it is paragraph 53 of the complaint that says because of the reduced initial response rate, the Census Bureau will have to hire additional enumerators to follow up with those individuals. But it is entirely speculative whether those efforts will fail. It's also speculative, even assuming those efforts fail, whether the undercount will be material in a way that ultimately affects the plaintiffs. Because this is a pre-census case, it's not like Carey where there, like I said earlier, there

were already preliminary figures suggesting that the Census Bureau had an inaccurate count in New York City.

THE COURT: Let me ask you about traceability. Why is that argument not foreclosed by the Circuit's decision last Friday in the NRDC v. NHTSA case. I don't know if you've seen it, but the Court held that — rejected an argument by the

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apportionment, for funding, etc., essentially it's too speculative to know whether and to what extent it will have an effect and that ultimately you also need to prove that it has a material effect on those?

MR. SAINI: Your Honor, first we would note that we are at the pleading stage here so we do not need to determine with certainty the exact level of injury that we expect to suffer, if we do intend to provide further factual development in the form of expert and fact discovery to help further elucidate the injuries that we expect to result.

But more importantly, your Honor, there is plenty of case law relating to — from here in the Second Circuit relating to the viability of funding harms from undercounts such as in Carey v. Klutznick, for instance, the Court recognized that funding harms were sufficient to establish Article III standing on the basis of plaintiffs' State and City of New York's claims that an undercount would affect their federal formula grants. And, similarly, the Sixth Circuit found in the City of Detroit v. Franklin that undercounting would affect potential funding under the Community

Development Block Grant Program which we also have alleged in our complaint.

The last thing to note here —

THE COURT: Can I ask you a question. Mr. Shumate's argument is that Carey is different because it's a post-census case and not a pre-census case and in that regard it didn't involve the same degree of speculation with respect to there being an undercount. What's your answer to that?

MR. SAINI: Our answer to that, your Honor, is, again, plaintiffs here — the defendants here have repeatedly recognized that a citizenship question will impair the accuracy of the census both by driving down response rates but also by deterring cooperation with enumerators. That specific fact of government acknowledgment that this causal connection exists and that there's a substantial likelihood that a citizenship question will result in undercounts is significant here.

In addition, we have also pointed to, in the complaint at paragraphs 50 and 51, the results of pretesting conducted by the Census Bureau which shows unprecedented levels of immigrant anxiety. That pretesting also reveals that immigrant households, noncitizen households are increasingly breaking off interviews with Census Bureau officials. The results of that pretesting show that not only is there a substantial likelihood of an undercount here but there's a substantial likelihood of a serious undercount here. That's more than enough for plaintiffs to meet their burden.

THE COURT: And presumably those allegations are relevant to the question of whether the in-person enumerator follow-up would suffice to address any disparity; is that correct?

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standard and why is that not judicially manageable?

MR. SHUMATE: Because that case implicated the actual enumeration question. So there is a standard as to decide whether the Secretary's actions are intended to count every person in America. But that's not this case.

THE COURT: Isn't that the ultimate purpose of the census?

MR. SHUMATE: That is the ultimate purpose of the census, but the manner of conducting the census itself, the information-gathering function in particular is a political question. There is simply no law that the Court can find in the Constitution to decide whether the government should collect this type of information or that type of information.

THE COURT: So is it your argument that if the Secretary decided to add a question to the questionnaire that asks who you voted for in the last presidential election, that that would be unreviewable by a court?

MR. SHUMATE: It would be reviewable by Congress but not a court. That demonstrates why this is a political question, because Congress has reserved for itself the right to review the questions.

Two years before the census the Secretary has to submit the questions to Congress. If Congress doesn't like the questions, the Congress can call the Secretary to the Hill and berate him over that; or they can pass a statute and say no, we're going to ask these questions. That's how the census used to be conducted. It used to be that statutory decision about which questions to ask on the census. But Congress has now delegated that discretion to the Secretary. But ultimately it is still a political question about the manner of conducting the census that is committed to the political branches.

THE COURT: What if the Secretary added a question that was specifically designed to depress the count in states that — we live in a world of red states and blue states. Let's assume for the sake of argument that the White House and Congress are both controlled by the same party. Let's call it blue for now. And let's assume that the Secretary adds a question that is intended to and will have the predictable effect of depressing the count in red states and red states only. Again, don't resist the hypothetical. Your argument is that that's reviewable only by Congress and even if Congress, even if there's a political breakdown and basically Congress is not prepared to do anything about that question, that question is not reviewable by a court?

MR. SHUMATE: Correct. Because it is a decision about which question to ask. It wouldn't matter what the intent was behind the addition of the question. It's fundamentally different than a question, like the courts have reviewed in other cases, about who to count, how to count, things like

that, should we count overseas federal employees. That's a judicially manageable question. We can decide whether those individuals should be counted or not. It's different than whether sampling procedures should be allowed because it implicates the count itself. This is the pre-count information-gathering function that is committed to the political branches.

THE COURT: A lot of your argument turns on accepting that the plaintiffs' challenges to the manner in which the census is conducted as opposed to the enumeration component of the clause. Isn't the gravamen of the plaintiffs' claim here that by virtue of adding the question it will depress the count and therefore interfere with the actual enumeration required by the clause?

MR. SHUMATE: They're trying to make an actual enumeration claim, but their factual allegations don't implicate that clause of the Constitution at all because what they're challenge is the manner in which the Secretary conducts the information-gathering function delegated to him by Congress.

So there is no allegation in the complaint, for example, that the Secretary had not put in place procedures to count every person in America. I think they would have to concede that the Secretary has those procedures in place and intends to count every person in America.

Now they argue that — I will get to this later —

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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18 Civ. 2921 (JMF)

STATES OF NEW YORK, COLORADO, CONNECTICUT, DELAWARE, ILLINOIS, IOWA, MARYLAND, MINNESOTA, NEW JERSEY, NEW MEXICO, NORTH CAROLINA, OREGON, RHODE ISLAND, VERMONT, and WASHINGTON, *et al.*,

Plaintiffs,

—v.—

UNITED STATES DEPARTMENT OF COMMERCE, *et al.*,

Defendants.

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18 Civ. 5025 (JMF)

NEW YORK IMMIGRATION COALITION, *et al.*,

Consolidated Plaintiffs,

—v.—

UNITED STATES DEPARTMENT OF COMMERCE, *et al.*,

Defendants.

Trial

New York, N.Y
November 5, 2018
9:00 a.m.

Before:

HON. JESSE M. FURMAN,

District Judge

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conclusions — could you tell the court the conclusions that you reached in this matter?

A. Yes. I think we have a slide.

Q. You did prepare a slide.

Could we see PDX 1.

A. OK. It is right here.

So to quickly summarize the large number of pages I wrote in my expert report, my key conclusions are that there are considerable evidence, some of that evidence internal to the census bureau, some external from academic work — that indicates that adding a citizenship question to the decennial census will depress census participation among noncitizens and Hispanics, exacerbating the differential undercount.

Second, that the Census Outreach Campaign and the NRFU which is a nonresponse followup

operations of the census enumeration are unlikely to fully address the expected differential self-response of noncitizens and Hispanics.

Third, that the decision to add the citizenship question without specific pretesting violates Census Bureau guidelines and survey methodology standard practices.

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Finally, that the addition of a citizenship question undermines not only the accuracy and completeness of the census, but also other dimensions of Census Bureau data quality standards, that is, the utility of the data and the integrity of the data.

A. It is a very specific and detailed process, but at the very broad level, you know, after a decade of testing, there is two phases. The first is the self-response phase in which individual households are completing the census form themselves and sending it to the Census Bureau for the first time. That will be online. After households have had a chance to self-respond, there will be the NRFU response, the nonresponse followup, to enumerate those households who did not self-respond.

Q. Could you speak to the importance of the self-response phase?

A. Well, the number one thing, it is a heck of a lot cheaper to get people to mail in or complete a survey form online rather than sending out a census enumerator to knock on their door.

But census research also shows that the self-response is also much more accurate than what you get when you rely on NRFU operations.

Q. Just to break down what NRFU represents, just what does nonresponse represent?

A. So people failing to self-respond.

Q. Then we'll get into this in more detail, but what are, broadly speaking, nonresponse followup operations?

A. So the nonresponse followup operations, at the basic level, are sending census numerators to the door to knock on the door, to get households to complete the response for the first time. If that first visit doesn't result in a completion, administrative records will be used to help figure out if a household is occupied or not occupied. Additional visits will be made, and eventually if a household is not responding, then proxy respondents will be used. This is where the enumerator will ask a neighbor or a landlord or the postal worker to share information about the household. And finally, there is a stage of imputation.

Q. Earlier, when you were describing some of the concepts related to your book, you used the term undercount.

What does that mean?

A. So actually, with the very first census, George Washington said, We have a census number, but we think it is an undercount. So there has been recognition from the get-go that some people are missed by the census.

Really, since the 1940s, there has been research about and documentation about the undercount, which is those who should have been counted and weren't.

THE COURT: Mr. Freedman, I would be particularly interested, Dr. Hillygus mentioned that the self-response portion is more accurate, quote-unquote, than the NRFU stage. I don't know if you're going to get to that, but I want to just flag it.

MR. FREEDMAN: We can certainly have her give an

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since census responses by law may only be used anonymously and for statistical purposes.

Are you familiar with that language?

A. Yes.

Q. Do you have a view about that?

A. The statement that a citizenship question is no additional imposition contradicts the survey methodology research and the Census Bureau opinion about a citizenship question.

Q. OK. While we're on Secretary Ross' memo, I want to look at some of his language on page three.

The language says: However, neither the Census Bureau nor the concerned stakeholders could document that the response rate would, in fact, decline materially.

Are you familiar with that language?

A. Yes.

Q. Do you have a view about that?

A. It is incorrect. That is my first conclusion.

Q. OK. Why don't we go back to PDX 1 and we can talk about your first conclusion.

Could you summarize your first conclusion for the court?

A. Sure.

I reviewed a lot of research. I reviewed a wide range of different types of research. Some of it internal to the census, some of it external to the census. Some of it general about survey methodology, some something specific to census participation. Some using surveys of self-reports, some looking at behavioral responses. All of it points to a negative impact on the participation of noncitizen and Hispanic households.

Q. Can you summarize the evidence that you reviewed?

A. Sure.

So the key pieces are that noncitizens and Hispanics are differentially concerned about the confidentiality of a citizenship question, so it would be less likely to participate, which will contribute to a give recommend under count.

Q. Is there any evidence to suggest that the citizenship question is a sensitive question?

A. Yes. The Census Bureau itself designates it as a sensitive question.

Q. Now, are you saying that both noncitizens and Hispanics will be affected by the addition of a citizenship question?

A. Yes. In the analysis in the Census Bureau, sometimes the analysis focuses on Hispanics and sometimes on noncitizens. The justification there seems to be that there is an overlap, that noncitizens, a large percentage, are Hispanics.

But in review of the research, it is also the case that there is a reason that I conclude that Hispanics will also be affected, including Hispanic citizens, because there is empirical evidence suggesting as much.

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of the impact of a citizenship question on self-response.

MR. FREEDMAN: Your Honor, I'll be getting there in one minute.

THE COURT: All right.

BY MR. FREEDMAN:

Q. At Dr. Abowd's analysis, because this is the analysis that was in the administrative record, do you view this finding as significant?

A. Yes. I mean, this is documenting that there's going to be a negative impact, and as I think we'll get to later, there's lots of reasons I think this is too conservative of an estimate, but this is a Census Bureau research predicting a negative impact of a citizenship question on the self-response of noncitizen households.

THE COURT: And can you opine on the size of the 5.8 percent estimated differential, how significant that is in the context of a sampling methodology?

THE WITNESS: So, is it in the sense, like, statistically significant? Yes, and of course, what is tricky but is meaningful is the fact that there is, of course, the 5.— you know, noncitizen households are not evenly distributed across the nation, and so this — this negative impact is, to me, really clear evidence — right — that the Census Bureau itself predicts that adding a citizenship question is going to depress participation of noncitizen households.

BY MR. FREEDMAN:

Q. Now, you mentioned that there's discussion that this was conservative. I want to turn to the Brown memo because the Court asked about it.

MR. FREEDMAN: Could we see Plaintiffs' Exhibit 162.

Q. Dr. Hillygus, what is Plaintiffs' Exhibit 162?

A. This is the memo that reports the Census Bureau's analysis of the likely impact of a citizenship question on the 2020 census.

Q. And when we refer to the Brown memo, are we referring to this?

A. Yes.

MR. FREEDMAN: I believe that there was no objections on this one.

MR. TOMLINSON: That's correct, your Honor.

THE COURT: Then it is admitted without objection.

(Plaintiffs' Exhibit 162 received in evidence)

MR. FREEDMAN: I want to take a look at page 39, the discussion of the conservative.

Q. So, I just want to read for the record: "The level of concern about using citizenship data for enforcement purposes may be very different in 2020 than it was in 2000 or 2010, so a more recent test would be preferable. These factors suggest that the estimated effect on self-response from the exercise in table 9 is conservative." Are you familiar with that language?

A. Yes.

Q. Do you have a reaction to that?

A. Yes, Brown identifies some reasons why the estimate is conservative. I think there are also a number of other reasons that the estimate is likely conservative.

Q. And just so we're clear, what level did Dr. Brown find? What did he measure, or what did he estimate?

A. So, depending on the particular model, you know, 5.1 to 11.9 were all estimated potential effects.

Q. And do you have any views as to the significance of that range of numbers?

A. Well, I mean, even 5.1 is — is a significant and important finding, so I don't — I don't want to diminish how important that finding is in and of itself while I would also say that if we were going

to make a judgment, it is that this is, you know, likely too small of an estimate, and as Brown *et al.* also concluded.

Q. So, I want to walk through the reasons you view this as conservative, and you prepared a slide on this.

MR. FREEDMAN: Could we see Plaintiffs' Exhibit 11, demonstrative 11. 11. PDX 11. Sorry.

Q. Dr. Hillygus, what is PDX 11?

A. These are just some of the reasons that I considered the estimate, while still incredibly important and significant, if anything, to be too small.

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account for those factors that might also create differences between the rates of participation among citizen and noncitizen households that are not about confidentiality concerns.

Q. And your specific criticism of what they did, could you just explain that?

A. So, they include some controls in the model, but one of the things that they controlled for was English-language ability, which I consider to be something that's probably a proxy for, you know, getting close to, you know, the pool of people who are likely to have confidentiality concerns. And it's — mechanism testing is very difficult with observational data.

As the Brown memo notes, you know, they're doing the best they can with the data they have available. They would prefer to have randomize

controlled trial but in terms of the various modeling assumptions that were made that, you know, again, like they conclude, this is a conservative estimate.

Q. OK. I want to go back to the first point, the question's more prominent on the short form than on ACS. What does that mean?

A. Their estimate is based on leveraging differences between citizen and noncitizen households responding to the ACS compared to the short form, but once you add a citizenship question to the short form, you are talking about a citizenship question being added — being one of 11 questions, whereas the ACS has something like 75. So just the extent to which it

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MR. FREEDMAN: Plaintiffs move 665 into evidence.

THE COURT: Any objection?

MR. TOMLINSON: Your Honor, I don't think we have any objection.

THE COURT: It's admitted.

(Plaintiffs' Exhibit 665 received in evidence)

BY MR. FREEDMAN:

Q. Dr. Hillygus, could you just explain sort of how these forms illustrate the point?

A. Yeah. So, what you have with the short form — right — is you've got all the questions right there, whereas with the ACS you have a large number of questions that are covering a large

range of different topics, and so citizenship doesn't stand out as, as being something that is as central to the survey.

Q. Thank you.

MR. FREEDMAN: Your Honor, I was about to switch gears. I'm not sure if the Court and the parties need a break or if the Court needs a break.

THE COURT: Well, I was going to break in about five minutes, but if you think this is a better stopping point, we can break now. It's 11:10. Let's take a ten-minute break.

I'd like the witness back on the stand and ready to go at 11:20. We are adjourned until then. Thank you.

MR. FREEDMAN: Thank you, your Honor.

(Recess)

PAGES 110 TO 111

more purposes. But that's where I stand.

MR. FREEDMAN: I'm not sure. We probably can't establish a further foundation through this witness. We have other witnesses who can probably establish more of a foundation.

THE COURT: All right. It's admitted subject to connection, but certainly as one of her reliance materials.

(Plaintiffs' Exhibit 386 received in evidence)

THE COURT: You may proceed.

MR. FREEDMAN: Let's go back to PDX 15.

Q. The third bullet, "Survey methodology research also shows that those with tenuous

residential arrangements are more likely to be omitted from a household roster, especially by proxy respondents," what do you mean by that?

A. Again, this is just another research study that shows that the households that are more complex — right — are more likely to have proxy respondents omitting members of the household. Again, this is that key link between proxy respondents not just giving less accurate information, but they are underestimating the size of noncitizen and Hispanic households at a higher rate than they would do for other households.

Q. Turning to your fourth bullet, "Given broad deportation concerns shown in public opinion polls, we might expect reluctance from neighbors," what do you mean by that?

A. Yeah, this just gets to — I wish the Census Bureau had directly studied it, but certainly the evidence points to the likelihood that the neighbors are also going to be reluctant to share information, particularly about citizenship status, of their neighbors. And what the consequence, the potential consequence of that is that that your proxy respondents — you'll either have more difficulty finding a proxy respondent or you're going to find proxy respondents who have less information about the household, and so again — the Census Bureau recognizes that a citizenship question is going to decrease the accuracy of the count.

What I think the evidence is suggest — is showing is that it's systematically going to underestimate household size because of the use of proxy respondents.

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are — that those who are not responding, that they aren't different from those who do respond conditional on the observed variables.

I think there is compelling evidence that because household size is related to census participation, because Hispanics and noncitizens are documented to have larger household sizes on average, that it is not reasonable to assume that the household size of those individuals who failed to respond will be the same as those who do.

Q. All right. You testified earlier that what the Census Bureau was doing in 2010 was not cutting edge and not appropriate.

What did you mean by that?

A. Well, I just, you know, Dr. Abowd recognized that there are non-ignorable imputation procedures. He's done work in this area. The former academic in his position, Dr. Little, also has done work in this area. There are procedures available for being able to correct to do non-ignorable imputation. It is a different, as he acknowledged, a different set of expertise than what their post enumeration survey employees are equipped to do.

Q. Why don't we talk about the third bullet, the evidence that missing data is non-ignorable.

Could you just explain what that is and what evidence you're referring to?

A. Again, it is not possible to know from those who actually respond, if those who didn't respond

are the same or different. You have to rely on external data. And a common, you know, a reasonable thing to look at is to look at, for instance, American community survey data.

But there is evidence that household size is related to census participation. That is the key for saying that the missing data is non-ignorable because the missingness is related to the quantum that we're trying to impute.

Q. Are you aware of any Census Bureau research on this topic?

A. Yes. It is cited on the bottom of the page.

Q. OK. So why don't we look at some of this.

Can we pull up the Griffin article, PX 400.

Dr. Hillygus, do you recognize PX 400?

A. Yes.

Q. What is it?

A. Well, this is looking at some of the issues related to imputation.

Now, the focus here is on characteristic imputation, which is, again, one of the topics in terms of the non-ignorability that has been acknowledged within the Census Bureau.

Q. Do you know who Dr. Griffin is?

A. A researcher of the Census Bureau, based on . . .

Q. Did you consider this article in conjunction with

what were the implications of changing it; what would be the impact on all the aspects of data quality that the Census Bureau cares about? Ultimately, decision was made not to make the change, but that process is strikingly different from what has occurred here.

The other question that was modified was relationship to head of household. Again, there was extensive pretesting, pretesting both in terms of, say, cognitive interviews as well as within the field, and ultimately, that revision was made, again, another example where there was a change in the decennial, but an entirely different process was used, one that engaged with stakeholders about the change and explicitly did pretesting.

Q. In your opinion, has the citizenship question been adequately tested to place on the 2020 census?

A. No.

Q. Why do you say that?

A. There has been no pretesting of the revised questionnaire. The question is different from what has appeared in other census products.

I believe I have a slide, if now is the right time to use it.

Q. We'll get to that in a second.

Does the sensitivity of the citizenship question speak to the adequacy of the testing that's been conducted?

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adequately there for the purposes needed.

Q. I want to just break down your response and go through each part more carefully. Just help us understand, or can you help the Court understand, why even if it's not, pretesting's not required, that decision doesn't make sense given the decennial census or the citizenship question?

A. So, if you look at the process used for adding a question to the ACS, there is a well-documented, five-year process to add a question, and you know, this — it is understood that if you're going to pose a question, you're going to go through extensive testing and engagement, and they say it's going to take five years.

It is true that the short form hasn't had an addition to the question, and so the question is, could we really have a weaker standard than that of what we hold the ACS to? And so it just is surprising to say that you could add, at the last minute, a question without, without pretesting.

Q. OK. And then on the second point that you made about the questions about whether the citizenship question is performing adequately, could you explain what you mean?

A. So, roughly 30 percent — according to analysis by Dr. Abowd, roughly 30 percent of people identified as noncitizens by administrative records reported themselves as citizens in the ACS.

Q. Let's actually look at Dr. Abowd's memo.

PAGES 169 TO 170

language?

A. Yes.

Q. And how does that support your view?

A. It, again, suggests the necessity of doing pretesting before adding a citizenship question.

Q. There's one more passage from Dr. Abowd's memo: "If the administrative data indicate noncitizen, the self-report is citizen at a very high rate (never less than 23.8 percent)." Are you familiar with that language?

A. Yes.

Q. How does that support your opinion?

A. Again, it suggests that there is evidence about the need for pretesting before adding to the decennial short form.

THE COURT: That's Plaintiffs' Exhibit 22, is that correct?

MR. FREEDMAN: Yes, Plaintiffs' Exhibit 22.

THE COURT: Thank you.

BY MR. FREEDMAN:

Q. Dr. Hillygus, do you have an opinion whether the citizenship question is performing adequately on the ACS?

A. So, I think that there is sufficient evidence to suggest that there is a real need to do pretesting prior to adding a citizenship question to the decennial short form.

Q. Are you aware of anyone else who thinks that more testing is needed?

A. Essentially everyone I have spoken to, but yes, I know the former directors of the census, every social science organization that has shared opinions. There's a long list of people who agree, but I think the former directors of the census offer a particularly compelling opinion.

MR. FREEDMAN: Why don't we look at their comments, if we could turn to PDX 11057.

Q. Dr. Hillygus, do you recognize — this is from the administrative record, but do you recognize this letter?

A. I do.

Q. What is it?

A. The letter from former directors of the census, who served under both Democratic and Republican presidents, offering their opinion about the proposed addition of the citizenship question.

Q. And they wrote, and I'll quote: "There is a well proven multiyear process to suggest and test new questions. We strongly believe that adding an untested question on citizenship status at this late point in the decennial planning process would put the accuracy of the enumeration and success of the census in all communities at grave risk." Do you agree with that?

A. I do.

Q. If we could turn to the signature page, do you know who these individuals are?

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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18 Civ. 2921 (JMF)

STATES OF NEW YORK, COLORADO, CONNECTICUT, DELAWARE, ILLINOIS, IOWA, MARYLAND, MINNESOTA, NEW JERSEY, NEW MEXICO, NORTH CAROLINA, OREGON, RHODE ISLAND, VERMONT, and WASHINGTON, *et al.*,

Plaintiffs,

—v.—

UNITED STATES DEPARTMENT OF COMMERCE, *et al.*,

Defendants.

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18 Civ. 5025 (JMF)

NEW YORK IMMIGRATION COALITION, *et al.*,

Consolidated Plaintiffs,

—v.—

UNITED STATES DEPARTMENT OF COMMERCE, *et al.*,

Defendants.

Trial

New York, N.Y.
November 6, 2018
9:00 a.m.

Before:

HON. JESSE M. FURMAN,

District Judge

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(Trial resumed)

THE COURT: Good morning. Welcome back. I hope everybody has voted.

Anything we should discuss?

I saw the various things that were docketed including defendants' objections to the second supplemental exhibit list.

MR. COANGELO: Your Honor, we did want to raise a question of the trial affidavits.

In light of defendants revised list of objections yesterday evening, we understand that there are five of plaintiffs' fact witnesses whose testimony is no longer objected to.

With leave of court, we would move their testimony in.

THE COURT: All right. Who are they?

MR. COANGELO: Those are Susan Brower, Marchelle Franklin, Samer Khalaf, Elizabeth

Plum, and Arturo Vargas, which we mentioned to the court yesterday.

THE COURT: All right. Ms. Bailey, any objection?

MS. BAILEY: No, your Honor.

THE COURT: All right. They are admitted, and you should docket them pursuant to what I said yesterday.

MR. COANGELO: Thank you, your Honor.

THE COURT: What do you want to do about the others to which there are objections?

You mentioned yesterday wanting to address that today

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begin preparations. I started this effort in August, September of '17, as I did in previous censuses, to alert City Hall and the mayor that we needed to begin preparations and to describe what steps were involved in those preparations. So I am, I think it's fair to say, a catalyst to make sure that the city officials, who may not be familiar with what happens around census, that I educate them about what needs to be done.

Q. Other than the census office that you testified to earlier, what other outreach efforts is the city planning for the 2020 census?

A. The city is going to become part or is now, excuse me, part of a statewide effort called New York Counts 2020, and this is an effort that involves a large number of local community organizations, nonprofits. The city is also talking to for-profit entities, like the Association for a

Better New York, about developing focus-group research and doing survey research around messaging, because we all acknowledge in our meetings that the messaging this time around is going to have to be a bit different than it's been in the past.

Q. You also testified earlier to the allocation of money for the 2020 census. Can you walk me through the process of how that money was allocated?

A. Yes, I was a bit confused earlier, and I'd like to clarify that.

The initial effort that I made in September or so of '17 to inform City Hall, I got a really good, great response. The mayor, at Gracie Mansion, in November, hosted a group of people from the Conference of Mayors, and there was a discussion about census. And then the letter came out from the Department of Justice, in December, and that triggered a substantial amount of consternation on the part of the administration.

Around that time, the design of, that I described to you in my earlier testimony was coming — was being put in place, and a budget assigned for that purpose of about $4.3 million was put in place early in 2018. And that was the initial budget. I got a bit confused because the actual budget now is 5.5 million, and that occurred subsequent to the official announcement that request was being made to add citizenship to the decennial census. So the five — the raise, the increase to 5.5 million was actually subsequent to the announcement that was made in March, where the request was actually put in by the commerce secretary to the Census Bureau.

Q. Just to clarify, the first allocation that occurred after the December letter, what is the December letter you're referring to?

A. I'm referring to a letter from the Department of Justice requesting the addition of a citizenship question to the 2020 census.

Q. And who made the request for that allocation?

A. The request was made based upon discussions I had with City Hall about what would be needed in order to properly staff an office.

Q. So where does that allocation come from?

A. The allocation of dollars comes from the city's budget through the department of city planning.

Q. That's the department of city planning that you oversee?

A. The department, yes, that I'm part of.

THE COURT: Is that spending that the mayor's office has discretion to reallocate, or is it something that would require City Council approval?

THE WITNESS: My understanding, Judge, your Honor, is that it is an allocation that was requested from the office of management and budget by City Hall, and it's been — it exists within my agency. That is the extent of my knowledge about that. In other words, request was made, the office of management and budget approved it, and the moneys are being allocated through my agency.

THE COURT: And what role, if any, did the Department of Justice letter play in the increase from 4.3 million to 5.5 million in funding?

THE WITNESS: It was subsequent to the December letter from the Department of Justice, and the 4.3 million was subsequent to that, to the letter in December of '17. And then it was raised to 5.5 million in 2018 subsequent to the actual request to add the question on citizenship to the census.

THE COURT: Sorry. Can we narrow this down? Do you know what date the letter from the Department of Justice requesting the addition of the question came out?

THE WITNESS: It was December of '17.

THE COURT: And do you know when Secretary Ross made the decision to add the question?

THE WITNESS: March of '18.

THE COURT: All right. Can you tell me when in relation to those the $4.3 million in funding was allocated and then when it was increased to 5.5?

THE WITNESS: Sure. That was made in the beginning of 2018, subsequent to the December letter. And then the 5.5 million is relatively recent. It was well after the March announcement of a citizenship question.

THE COURT: Do you have personal knowledge with respect to what role, if any, the March announcement had in increasing that funding?

THE WITNESS: It intensified the resolve of City Hall to commit resources. I was in meetings where I observed that consternation and that concern, and yes, I was — I have firsthand knowledge of those meetings.

THE COURT: And did you play any role in the increase in funding from the 4.3 to 5.5 million in funding?

THE WITNESS: Actually, Judge, no.

THE COURT: All right. Thank you.

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two being Gregory Lucyk and Jacqueline Tiema-Massie.

I can go through the remainder, and hopefully that will help determine whether there is a need to call any of these witnesses. Now, first, I'll go through them in order.

With respect to Mr. Altschuler, what I said earlier with respect to relevance objections applies here too. If it is irrelevant, I will not consider it. In light of that, the objection is overruled.

Now, with respect to Mr. Breitbart — give me one moment.

All right. With respect to Mr. Breitbart, I think there are some paragraphs which, again, sort of stray into descriptions of the law, which is my prerogative, not the witness's. So paragraphs three and four and nine, for example, I think go a bit too far. Again, suffice it to say, I won't consider the witness's testimony on those issues. I will, however, sustain the objections in part, namely with respect to paragraph eight in its entirety, and with respect to the opinion portion of paragraph ten, that is, the portion at the end beginning with the differential undercount of noncitizens, all of paragraph 11. And, again, what

I would describe as the opinions offered in paragraph 12, that is the first sentence also beginning a differential undercount, and then the end beginning with "consequently, if inclusion of."

Now, I don't think that those are objections that can

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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18 Civ. 2921 (JMF)

STATES OF NEW YORK, COLORADO, CONNECTICUT, DELAWARE, ILLINOIS, IOWA, MARYLAND, MINNESOTA, NEW JERSEY, NEW MEXICO, NORTH CAROLINA, OREGON, RHODE ISLAND, VERMONT, and WASHINGTON, *et al.*,

Plaintiffs,

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UNITED STATES DEPARTMENT OF COMMERCE, *et al.*,

Defendants.

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18 Civ. 5025 (JMF)

NEW YORK IMMIGRATION COALITION, *et al.*,

Consolidated Plaintiffs,

—v.—

UNITED STATES DEPARTMENT OF COMMERCE, *et al.*,

Defendants.

Trial

New York, N.Y.
November 7, 2018
9:10 a.m.

Before:

HON. JESSE M. FURMAN,

District Judge

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to talk to the Census Bureau field agent, that the — and the Census Bureau will impute; they will make a guess based on information that it has particularly from the decennial census to impute.

Q. Thank you.

Switching gears again, do you recall questions from defense counsel about how you performed your calculations in regards to what year's funding and what year's population you were looking at?

A. Yes.

Q. And did you reference performing calculations as if they applied in the year 2010?

A. Yes.

Q. And then can you explain how you then — how did those opinions — I'm sorry.

How do those calculations relate to your opinions about the effect of a differential undercount in the 2020s?

A. The — as I said in my declaration, the core of my opinion is that a differential undercount caused by the introduction of the citizenship question would lead to differential impacts on federal funding to — particularly for programs that rely on FMAP and rely on state share or local share of national population. So to — the choice — using 2010 and choosing five programs was to demonstrate the principle, because those data are available. The 2020 data and the funding in 2026 are not available, so the idea is to demonstrate what would have happened if those scenarios took place in 2010, with the understanding that — the idea is to show a differential undercount, the impact of the differential undercount on particular states, and that the implication is that if there's a differential undercount in 2020, that similar kinds of impacts would happen in that decade.

Q. And do you recall defense counsel asking you specific questions about states' gains or loss under five programs for which you performed calculations?

A. Yes.

MR. ROSBOROUGH: Could you pull up PX 329, please.

Q. Dr. Reamer, is your overall opinion limited to the five programs for which you performed this calculation?

A. No.

Q. What other programs does it address, if any?

A. The ones in these charts, the five programs that I chose to do the calculations for, are

representative of this group of programs, and this group of programs is actually representative of an even larger group in that 320 that was mentioned earlier. These are larger programs. All but one are over a billion dollars a year. There are many smaller programs that rely on state share, or share of population to determine the allocation of federal money.

Q. Thank you.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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18 Civ. 2921 (JMF)

STATES OF NEW YORK, COLORADO, CONNECTICUT, DELAWARE, ILLINOIS, IOWA, MARYLAND, MINNESOTA, NEW JERSEY, NEW MEXICO, NORTH CAROLINA, OREGON, RHODE ISLAND, VERMONT, and WASHINGTON, *et al.*,

Plaintiffs,

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18 Civ. 5025 (JMF)

NEW YORK IMMIGRATION COALITION, *et al.*,

Consolidated Plaintiffs,

—v.—

UNITED STATES DEPARTMENT OF COMMERCE, *et al.*,

Defendants.

Trial

New York, N.Y.
November 9, 2018
9:00 a.m.

Before:

HON. JESSE M. FURMAN,

District Judge

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that would be in their benefit to report, that they had been a victim of a crime or any other things like that, or even going and attending court-ordered meetings, because they were worried that, given the threatening context and the environment, that there would be some risk to them and their family. And so they perceived that threat. They perceived that environment as telling them this is too risky, you need to stay away, and they found very, very high percentages. It indicates here four out of five in these instances who perceived that threat withdrew.

Q. How do you think these studies bear on the citizenship question?

A. Well, I think there's two ways to think about this and how similar they are. The first is just to think about the current political climate that we have today, what I call the macro environment, and it is quite similar to what these scholars have outlined in different periods in time and different

cities; that there is no question that there's a climate for many in the Latino and immigrant community that they would describe as threatening. The addition of the citizenship question, a question specifically asking people about which they are nervous today, leads me to believe that this would, similar to these published studies, greatly reduce participation.

Q. Are questions related to citizenship solely an immigrant issue?

A. No, not restricted just to immigrants.

Q. To whom do they apply?

A. Some of these studies that I cite here — in particular the Pedraza, Osorio and the Cruz Nichols piece — they examine whether or not this also applies to what we refer to as the second generation in the sociological literature, meaning those who were born in the United States but whose parents are immigrants. And in those two studies in particular, they find very strong evidence that U.S.-born Latinos whose parents are immigrants also report very high rates of anxiety and avoidance as a result of this threatening climate. So while they themselves have U.S. citizenship, through birth, they view this environment through the lens of their parents, and if their parents do not, it creates a lot of anxiety and stress, and then it leads to avoidance.

Q. Has the macro environment significantly changed since 2016?

A. I believe it has, yes.

MS. FIDLER: Let's go to another slide. Pull up PDX 26.

Q. Can you please describe this line?

A. Yes. This is a short summary of what I believe are some of the changes that the country has seen in the macro political environment in the Latino and immigrant community since 2016.

Q. Let's start with the first bullet. Can you please elaborate?

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THE COURT: Any objection?

MS. BAILEY: No, your Honor.

THE COURT: Admitted.

(Plaintiffs' Exhibit 683 received in evidence)

MS. FIDLER: Thank you.

BY MS. FIDLER:

Q. Why do you conclude that imputation will not ameliorate the decline in self-response attributable to the citizenship question in particular?

A. What we found when we analyzed this imputation model was that the decision to not respond appears to be correlated with household size, that is, people who are the most anxious and nervous and not willing to respond have larger household sizes that cannot be accounted for by other demographic differences. This is consistent with the literature that suggested that people would be more fearful if they had other relatives who were noncitizens and others living in the house.

So when the imputation model is applied at the very end of the process, there will be more Latino and immigrant households in need of imputation, first of all, because of the lower self-response and because of the lesser success of NRFU. So when we get to the imputation component, this model suggests that there will be a larger miss, disproportionately larger miss of Latino household sizes leading to a net undercount.

Q. What is an overcount?

PAGES 736 TO 737

respond to changes in administrative form.

But if you really wanted to test how this would work in the real world, you could certainly have run a pilot study or other testing of the exact instrument in the exact context.

Q. Is that something the Census Bureau normally does when they add a question to the census?

A. Yes.

This is something, as we heard testimony this morning, that there is an extensive process that outlines testing for new questions by the Census Bureau.

Q. Did they do that here?

A. They did not.

Q. Have you heard or read anything from the Census Bureau to explain or seeks to justify why they have not sought to test the question in these circumstances?

A. Yes.

Q. What is that?

A. I recall reading in Dr. Abowd's declaration, disclosure, that in his opinion or in the opinion of the Census Bureau, as he was summarizing, they felt that the question had been tested, and they further felt that they could get an exemption from a full test because this sort of process had been done before in previous census efforts.

Q. Did you reach any conclusions about the validity of that position?

A. Yes.

Q. What are they?

A. Well, with respect to the first point, that the question had been adequately tested, Dr. Abowd refers to the 2006 inclusion of the citizenship question for the first time on the ACS and says that that is an example of a question being tested that can therefore be applied to the decennial census.

In my opinion, that is an inappropriate test for two main reasons. The first is that the context is completely different. The macro environment that we spent so much time talking about earlier, what was happening in 2006 is nowhere consistent with the macro environment that we face today. Indeed, many census field workers themselves reported this to the Census Bureau when they were out in the field. So we can't assume that if a question worked or didn't work in 2006, related to citizenship, it would work today.

Secondly, it is not clear to me at all that the question was adequately performing, as the

Census Bureau indicates. In my review of the Brown, et al. report, as well as my review of new ACS response rates from 2017 that were provided to me, I concluded that the ACS citizenship question was not adequately performing. The Brown report indicates that as many as 30 percent of respondents may be giving inaccurate or false information about their citizenship status and that this is a known issue.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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18 Civ. 2921 (JMF)

STATES OF NEW YORK, COLORADO, CONNECTICUT, DELAWARE, ILLINOIS, IOWA, MARYLAND, MINNESOTA, NEW JERSEY, NEW MEXICO, NORTH CAROLINA, OREGON, RHODE ISLAND, VERMONT, and WASHINGTON, *et al.*,

Plaintiffs,

—v.—

UNITED STATES DEPARTMENT OF COMMERCE, *et al.*,

Defendants.

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18 Civ. 5025 (JMF)

NEW YORK IMMIGRATION COALITION, *et al.*,

Consolidated Plaintiffs,

—v.—

UNITED STATES DEPARTMENT OF COMMERCE, *et al.*,

Defendants.

Trial

New York, N.Y.
November 13, 2018
9:00 a.m.

Before:

HON. JESSE M. FURMAN,

District Judge

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Dr. Handley, how many times have you testified as an expert in voting rights cases overall?

A. About 25 times.

MR. HO: Your Honor, at this time, the plaintiffs offer Dr. Handley as an expert in redistricting minority voting rights and the use of census data in assessing minority voting opportunity under the Voting Rights Act?

THE COURT: Any objection?

MR. GARDNER: Defense have no objections beyond those expressed in the motion in limine which you ruled on before trial.

THE COURT: Thank you.

Those are preserved and she is so certified.

MR. HO: Thank you, your Honor.

BY MR. HO:

Q. Dr. Handley, do you have a slide summarizing what you were asked to do in this case?

A. I do.

Q. Could you bring up PDX 33.

Is this the slide, Dr. Handley?

A. Yes.

Q. What were you asked to do in this case?

A. I was asked whether, in my expert opinion, working on these kinds of issues, whether the current U.S. Census Bureau data, that is decennial census data and American Community Survey year is when the ACS is done.

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Q. Are there different kinds of ACS estimates?

A. Do you mean, say, for example, one-year and five-year?

Q. Yes. Based on duration?

A. Yes, there are.

Q. What is the difference between one-year ACS estimates and five-year ACS estimates?

A. The sample size for — that is done annually is maybe one in every 36 or 38 households, but by combining them over a five-year period, you have a larger sample size. About one in every eight households is included in the sample. And so these estimates are more reliable at smaller areas of geography. The one-year estimates are used for populations in 65,000 and over.

Q. Lets bring up Plaintiffs' Exhibit 504.

For the record, this has been admitted into evidence.

So this is a printout from the Census Bureau's website entitled American Community Survey, when to use one-year, three-year, or five-year estimates.

Do you see that, Dr. Handley?

A. Yes. Yes, I do.

Q. Lets look at the table on this screenshot.

As the Census Bureau explains it in its publicly available information, how do the one-year and five-year estimates differ in terms of sample size?

A. This says that the one-year is the smallest and the estimates?

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A. They are both derived from samples, yes.

Q. Were either of them hard-to-count data?

A. No.

Q. So even before the ACS, is it accurate to say that if you were using the long form CVAP data, you would be using an estimate?

MR. GARDNER: Objection, leading.

THE COURT: Sustained.

Q. Before the existence of the ACS data, if you were using the long form data, would that be a hard count or would that be an estimate?

A. It is an estimate derived from a sample.

Q. OK. Dr. Handley, I want to look at the last line of this paragraph where it reads: The ACS, however, does not yield the ideal data for such purposes for several reasons.

Do you see that?

A. I do.

Q. Do you see the sentence, if we look at the letter, is followed by four bulleted paragraphs?

A. Yes.

Q. I want to ask you about each of these bulleted paragraphs, and lets start with the first one.

MR. GARDNER: Your Honor, I'm sorry. Can I just lodge a continued objection? None of this is in her expert report.

THE COURT: Duly noted.

You may proceed.

BY MR. HO:

Q. In the first bulleted paragraph, Dr. Handley, in the second to last line, do you see where there is a reference to two different data sets?

A. Yes, I do.

Q. What is your understanding of what that is a reference to?

A. That would be both the decennial census and then the American Community Survey estimates. You would have to combine them in order to evaluate districts on the basis of the Voting Rights Act.

Q. Even before the American Community Survey, Dr. Handley, did you, in your work as an expert, ever have access to a single data set produced by the Census Bureau for public use that combined total population data on the one hand and citizen voting age population data on the other hand at the block level?

A. No.

I should make clear, I mean, you take these two databases and you combine them and, in fact, you're working with a single database, so to speak, when you're working in GIS and actually drawing districts. This is — it is not that I am drawing districts with two different databases. They are both combined within my GIS system.

Q. How difficult is it for you to combine those data sets into a single data set?

A. Not difficult at all. As I said, this is done once, and then I am drawing with the combined data set.

Q. Roughly how much of your time does it take to combine the two data sets into a single data set?

A. Well, as long as it takes to look — well, I have to run the American Community Survey data, for example, through a program to get the block level data, and then I simply put it into the machine.

Q. How much —

A. A few minutes.

Q. I'm sorry.

How much time roughly would you bill the Department of Justice or any other client for combining those two data sets?

A. Certainly less than an hour.

Q. What is your hourly rate?

A. 300.

Q. Has your work as a voting rights expert ever been impeded by the fact that you had to combine

two data sets, one having total population and the other having citizen voting age population?

A. No.

Q. Are you aware of any court rejecting a claim because the plaintiffs had to combine two different data sets, one combining total population — one containing total population and the other containing citizen voting age population?

A. I am aware of no such case.

Q. I would like to look at the second bullet here.

The second to last line in this bulleted paragraph makes a reference to to align in time.

Do you see that, Dr. Handley?

A. I do.

Q. What do you understand that to be a reference to?

A. The decennial census is taken at a specific time. The ACS, if you're going to use five-year estimates, for example, it is gathered over a five-year period.

Now, of course, the mid point of that five-year period could align with the census, but, you know, any given year there is, in fact, an ACS sample. I suppose if the jurisdiction is over 65,000, it would align in time.

Q. Is the decennial census data collected instantaneously at one point in time, or is it selected over a period of time?

A. The decennial census?

Q. Yes.

A. Over a short period of time.

Q. About a year. Does that sound right?

A. The decennial census?

Q. Yes.

A. I don't think so. I think it is less than that.

Q. Are you able to use five-year ACS CVAP estimates that align in time with the decennial census?

A. Yes, for 2010.

I would use the period of 2008 to 2012, and that mid point would align with the decennial census of 2010.

Q. Has your work as a voting rights expert ever been impeded by the fact that the decennial census occurs in one year, whereas the ACS five-year estimates are collected over a five-year period?

A. No.

Q. Are you aware of any court ever rejecting a plaintiffs' claim because the decennial census is collected in one year whereas the ACS five-year estimates are collected over a five-year period?

A. I am aware of no such case.

Q. I would like to look at the third bullet in this letter.

The first line of the paragraph references the margins of error of the ACS data.

Do you see that, Dr. Handley?

A. I do.

Q. Have you ever had access to block level CVAP data by race and ethnicity that did not have a margin of error?

A. Well, it is reported at the block group level, but margins of error are associated with the ACS data, not with the decennial census.

I'm sorry. I forgot the question.

Q. Have you ever had access to CVAP date by race and ethnicity that did not have margins of error associated with it?

A. I have not.

Q. Has that fact ever impeded your work as a voting rights expert?

A. It has not.

Q. Are you aware of any court ever rejecting a claim brought by plaintiffs simply because of the fact that their ACS CVAP data had a margin of error associated with it?

A. I have not.

Q. Lets look at the fourth and final bullet here.

There is a line here about or a phrase here in the third line to perform further estimates.

Do you see that?

A. Yes.

Q. Do you understand that to be a reference to the kind of estimation procedure you were describing earlier?

MR. GARDNER: Objection, leading.

THE COURT: Sustained.

Q. Dr. Handley, what do you understand the reference to performing estimates in this sentence to be referenced to?

A. I am assuming it is talking about a methodological approach of taking the block group or census tract and applying that to the block group, similar to what I described to you as doing in Texas, for example.

Q. Have you ever had access to block level CVAP data by race and ethnicity that was produced without performing such an estimation procedure?

A. I have not.

Q. Has that fact ever impeded your work as a voting rights expert?

A. It has not.

Q. Are you aware of any court ever rejecting a claim by plaintiffs because of the fact that their block level CVAP data was produced through an estimation procedure like described here?

A. I am not.

Q. Dr. Handley, leaving all of these points aside, individual points aside, has your work as a VRA expert ever in any way been impeded by the fact that you have had to use five-year ACS CVAP data?

A. It has not.

Q. Are you aware of any court ever rejecting a claim by plaintiffs who relied on five-year ACS CVAP data?

A. I am not aware of any case like that.

Q. I just want to shift gears and talk about one other topic, Dr. Handley, and that is about the plan to gather CVAP data through a question on the decennial census.

Dr. Handley, what is your understanding of whether or not

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If they want to admit it as a 703 document, I'm still concerned; this is not reflected in the report. But there's no sponsored witness to testify that this actually comes from the census website.

THE COURT: She just testified to that.

MR. GARDNER: I know that that's what she said, but there's no documentation on this document itself to reflect the provenance of this document. I understand what she testified to, but this isn't even in her report.

THE COURT: Well, that is evidence. You're entitled to cross-examine her on that if you think there's some reason to question it, but if that's the basis for your objection, the objection's overruled, and the document is admitted.

(Plaintiffs' Exhibit 535 received in evidence)

THE COURT: Go ahead.

BY MR. HO:

Q. Dr. Handley, is there a census block here that has a single person on it?

A. There is. If you look over at the table over on the left-hand side, I've recorded the total

population figures for each of the census blocks, and you can see that 3008 has one person in it.

Q. Let's assume, Dr. Handley, this person is of voting age. It's probably a safe assumption, right?

A. I don't think any children would be living alone, but —

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request, correct?

A. Correct.

Q. And with that conclusion, Secretary Ross ordered the inclusion of a citizenship question on the 2020 census, correct?

A. That's correct.

Q. And Secretary Ross ordered the bureau to combine data collected through a citizenship question on the 2020 census with the use of administrative records for developing block-level CVAP, or citizenship voting-age population, for the Department of Justice, correct?

A. He instructed us to use both the citizenship responses on the 2020 census and administrative data and to produce a citizen voting-age population by race and ethnicity table as we deemed best.

Q. And Secretary Ross refers to that as option D in his memo, is that correct?

A. That's correct.

Q. Dr. Abowd, as the chief scientist at the Census Bureau, you do not think that adding a

citizenship question to the 2020 census is a good idea, correct?

A. Correct.

Q. And Dr. Abowd, the leadership of the Census Bureau does not think that adding a citizenship question to the 2020 census is a good idea, correct?

A. Correct.

Q. And Dr. Abowd, your consistent recommendation has been not to include a citizenship question on the 2020 census, correct?

A. Correct.

Q. And Dr. Abowd, the consistent recommendation from the leadership of the Census Bureau has been not to include a citizenship question on the 2020 census, correct?

A. Correct.

Q. Let's back up for a moment, Dr. Abowd. I want to talk about how you arrived at those recommendations. Now, you first learned about the Department of Justice's December 12, 2017, request to add a citizenship question to the 2020 decennial census from Acting Census Bureau Director Ron Jarmin, correct?

A. That's correct.

Q. And you learned about that via email on December 15, 2017, correct?

A. That's correct.

Q. And your understanding is that the reason for the request was that the Department of Justice

wants block-level citizen voting-age population data, which I'll sometimes call CVAP, for purposes of enforcing the Voting Rights Act of 1965, correct?

A. That's correct.

Q. Now, Acting Director Jarmin asked you to assemble a team of experts to begin discussing how the Census Bureau might respond to the DOJ request, correct?

A. He asked me to assemble a team of technical experts, that's correct.

Q. And you refer to that team of technical experts as your SWAT team, right?

A. That's correct.

Q. And over the course of discussions with Dr. Jarmin, it became clear to you that he wanted a technical report as to how the Census Bureau could respond to the DOJ request, correct?

A. That's correct.

Q. And so you asked the SWAT team to write a white paper to summarize what they could learn about citizenship data that might be used to satisfy the DOJ request, correct?

A. That's correct.

Q. And you eventually wrote a memo addressed to Secretary Ross summarizing the work of the SWAT team, correct?

A. Summarizing the opinions of the senior executive staff that were based on that work and

other research done by other persons in the Census Bureau.

MR. HO: Let's look at Plaintiffs' Exhibit 26, the Ross decision memo again. Let's look at page 4, the first paragraph on the page, the last sentence.

Q. Secretary Ross writes: "So while there is widespread belief among many parties that adding a citizenship question could reduce response rates, the Census Bureau's analysis did not provide definitive, empirical support for that belief." Do you see that, Dr. Abowd?

A. Yes, I do.

MR. HO: We can take that down.

Q. Dr. Abowd, the memo that you wrote to Secretary Ross, in your opinion, that memo memorialized the Census Bureau's credible, quantitative evidence that the addition of a citizenship question to the 2020 census could be expected to lower the self-response rate in households that may contain noncitizens, correct?

A. Yes, that's correct.

Q. And you would describe noncitizens as an identifiable and large subpopulation, correct?

A. We identified households that either contained a noncitizen or might contain a noncitizen or a person of unknown citizenship status as a large subpopulation, yes.

Q. And that opinion is based upon the work of the SWAT team that was conducted under your direction, correct?

A. That's correct.

Q. And Dr. Abowd, you agree that the balance of evidence available suggests that adding a citizenship question to the 2020 census would lead to a lower self-response rate in households that potentially contain a noncitizen, correct?

A. Yes, I agree with that conclusion.

Q. And the Census Bureau agrees with that conclusion, right, Dr. Abowd?

A. Yes, they do.

Q. And reducing the self-response rate in that way, that's a bad thing, right, Dr. Abowd?

A. I have consistently characterized data produced by lower self-response rates as being less accurate.

Q. OK. I want to talk about your memo, Plaintiffs' Exhibit 22.

MR. HO: For the record, this has been admitted into evidence and is in the administrative record.

Q. Dr. Abowd, this is a memo that was prepared under your supervision, correct?

A. I'd like to clarify that the memo that I'm familiar with contains a watermark with a version number on it, and this doesn't.

Q. I think it may just be a function of it being on the screen. Do you see at the bottom of the page, Dr. Abowd, on the right-hand side, it has a Bates number, 1277?

A. Yes, I see that.

Q. Is your understanding that that number reflects the fact that this memo was part of the administrative record in this case?

A. Yes, Bates 1277 is definitely my memo.

Q. OK. Great.

So this is a memo that was prepared under your supervision, correct?

A. Yes.

Q. And the views are expressed in this memo are the views of the technical team, the SWAT team that assisted you, correct?

A. The views in this memo are a summary of the technical work that that SWAT team did and the contributions made by other senior executives at the Census Bureau.

Q. You agree with the conclusions in this memo, right, Dr. Abowd?

A. Yes, I do.

Q. And Acting Census Bureau Director Ron Jarmin reviewed and approved this memo, correct?

A. Yes, he did.

Q. And this is the last version of this memo, correct?

A. Yes, it is.

Q. This memo was routed to the secretary of commerce, correct?

A. Yes, that's correct.

Q. And you eventually had a meeting to discuss this memo with Secretary Ross on February 12, 2018, correct?

A. Yes, that's correct.

Q. Now, before your meeting with Secretary Ross that day, you had a premeeting on the same day with Undersecretary Karen Dunn Kelley in the Department of Commerce, correct?

A. Yes, that's correct.

Q. And during that premeeting with the undersecretary, you discussed this memo, correct?

A. We all discussed it, yes.

Q. And when you met with Undersecretary Kelley, she did not express any disagreements with the analysis in this memo, correct?

A. That's my recollection from the meeting, yes.

Q. And during the meeting that you had with Secretary Ross later that day, he asked you questions that indicated to you that he had a thorough understanding of the issues in this memo, correct?

A. Yes, that's correct.

Q. And that was the only meeting that you had with Secretary Ross to discuss the citizenship question before Secretary Ross issued his March 26 decision memo, correct?

A. Yes, that's correct.

Q. So let's be clear. Secretary Ross had only one meeting with the chief scientist at the Census

Bureau about the citizenship question before he issued his decision memo, correct?

A. Yes, that's correct.

Q. Now, your memo here, it addresses — I'm sorry.

MR. HO: Let's bring up your memo, Plaintiffs' Exhibit 22.

Q. It addresses three alternatives in response to the Department of Justice request, correct?

A. Yes, that's correct.

Q. And those alternatives are, A, make no change in data collection; B, add a citizenship question to the 2020 census; and, C, obtain citizenship status from administrative records, correct?

A. You didn't finish the sentence, but yes, that's correct.

Q. You don't disagree with how I characterized it, do you, Dr. Abowd?

A. I do not.

MR. HO: Let's look at the last paragraph on the page and highlight it.

Q. Dr. Abowd, you did not recommend alternative B, which was adding a citizenship question, correct?

A. The memo does not recommend it, and I supervised the preparation of the memo, that's correct.

Q. So you did not recommend alternative B, correct?

A. That's correct.

Q. In fact, you described alternative B in the memo as "very costly, harms the quality of the census count and would use substantially less accurate citizenship status data that are available from administrative sources," correct?

A. Yes, that's correct.

Q. That's adding a citizenship question, correct?

A. Alternate B is the addition of the citizenship question to the 2020 census, yes.

Q. OK. So instead of alternative B, you recommended either alternative A, no change, or alternative C, using administrative records, correct?

A. Yes, that's correct.

Q. And your memo's conclusion was that using administrative records instead of asking the citizenship question — that is, alternative C — would best meet DOJ's stated uses, correct?

A. Yes, that's correct.

Q. And your memo concluded that that using administrative records instead of asking a citizenship question "is comparatively far less costly than alternative B, does not increase response burden and does not harm the quality of the census count," correct?

A. That's correct.

MR. HO: Let's talk about the analysis of alternative B in your memo, and I want to look at page 4 of PX-22. I'm looking at the header under

— I'm looking at the header in Section B2, self-response rate analysis, and I want to ask you about the first paragraph here.

Q. This paragraph is describing an analysis of unit nonresponse rates to the 2000 census questionnaire as compared to the 2000 long form, right, Dr. Abowd?

A. Yes, that's correct.

Q. And by unit nonresponse, we mean the rate at which people fail to respond to a survey, correct?

A. Fail to self-respond, correct.

Q. The 2000 short-form census questionnaire did not have a citizenship question on it, correct?

A. Yes, that's correct.

Q. But the 2000 census long form did have a citizenship question on it, correct?

A. Yes, that's correct.

Q. And so what you did here is you compared unit self-response rates on these two questionnaires between noncitizens, on the one hand, and citizen households, on the other, correct?

A. That's not all we did, but you got the first step right, yes. Correct.

Q. OK. Let's just talk about the long-form analysis. We'll talk about the ACS analysis in a second.

A. Well, I meant that you hadn't completely characterized how we did the short and long-form analysis in 2000.

Q. You compared the decline in self-response on the census long form as compared to the census short form for households that contain a noncitizen to that same decline for households that were all citizens, correct?

A. Yes, that's correct.

Q. OK. And when you conducted this analysis, you found that for both citizen households and households had that had one noncitizen, the response rate on the long form was lower than on the short form?

A. The self-response rates on the long form were lower than those on the short form, that's correct.

Q. But for households that had one or more noncitizen in them, the decline in the self-response rate between the long form and the short form was 3.3 percentage points more than it was for all citizen households, correct?

A. Yes, that's correct.

Q. And you considered that decline to be evidence that a citizenship question causes households containing a noncitizen to self-respond to a survey at lower rates, correct?

A. We considered that credible, quantitative evidence that such a question might cause a decline on the magnitude of 3.3 percent in 2000.

Q. OK. Now, you also conducted similar analyses for the American Community Survey, correct?

A. That's correct.

Q. And that analysis in your memo — and that analysis is reflected in your memo here, correct?

A. As it existed as of January 19, that's correct.

Q. OK. We'll get to the later analysis. Let's just stick to the January 19 for now. Is that all right?

A. Yes, sir.

Q. OK. Now, just to pause for a moment here, Dr. Abowd, I want to just make sure the record's clear here. Your analysis of unit nonresponse rates here applies not just to alternative B but also to option D, the choice that the secretary of commerce ultimately made, correct?

A. It would apply to any alternative in which the citizenship question was asked on the short form.

Q. And that includes option D, what Secretary Ross ultimately ordered, correct?

A. Yes, that's correct.

Q. Now, before we talk about your analysis of ACS data, I just want to back up and ask a few questions about the ACS.

The ACS is an ongoing sample survey, correct?

A. Yes, that's correct.

Q. Sent to a little more than 2 percent of the population annually, correct?

A. It's sent to a larger percentage than that, but the responses come from between two and two and a half percent of the population annually.

Q. Responses to the ACS are required by law, correct?

A. That's correct, but the nonresponse follow-up is a sample, not universally selected households.

Q. We'll talk about the nonresponse follow-up to the ACS in a second. I just want to make clear that just like responses to the decennial enumeration questionnaire are required by law, responses to the ACS are also required by law, correct?

A. Yes, that's correct.

Q. Now, the ACS contains dozens of questions, correct?

A. Yes, at least dozens.

Q. And one of the questions on the ACS is a question about citizenship status?

A. Yes, that's correct.

Q. Now, your memo here has three different kinds of analyses of American Community Survey, or ACS, data that bear upon the potential adverse impact of a citizenship question on the 2020 census, correct?

A. I think you're referring to the Section B1, 2 and 3 in the memo?

Q. I'm referring to your analysis of unit nonresponse rates, item nonresponse rates and breakoff rates.

A. Yes, that's correct.

Q. OK. All three of those analyses bear upon the potential effect of a citizenship question on the 2020 census, correct?

A. Yes, that's correct.

Q. And it's the opinion of the executive staff of the Census Bureau that all three analyses were

appropriate in support of your conclusion that using administrative records would be a better option for producing block-level CVAP data for VRA enforcement purposes than adding a citizenship question to the census, correct?

A. Yes, that's correct.

Q. And this memo included that all three analyses support the conclusion of an adverse impact on self-response and as a result on the accuracy and quality of the 2020 census, correct?

A. I don't remember it using adverse impact, but they support the conclusion that there would be a lower self-response rate and the consequences of that lower self-response rate, yes.

MR. HO: OK. Let's just look at the bottom of — I'm sorry. At page 4 in your memo, the first two sentences there at the top. I'm sorry. Not the bottom but just the top, "before these reasons" sentence, the top paragraph on the page.

Q. You used the term "adverse impact" to describe the effect of the citizenship question on self-response rates, right, Dr. Abowd?

A. Thank you for refreshing my memory. Yes, I did.

MR. HO: OK. Let's talk about your analysis of unit self-response rates, and let's stay on page 4 and let's look at the bottom paragraph, starting with "we compared."

Q. Now, Dr. Abowd, in this paragraph, you're describing an analysis comparing response rates on the 2010 census to the 2010 American Community Survey, correct?

A. That's correct.

Q. And the 2010 census, let's just be clear, that questionnaire did not have a citizenship question on it, right?

A. That's correct.

Q. But the 2010 ACS did have a citizenship question, right?

A. Yes, that's correct.

Q. And when you conducted this analysis, you found that self-response rates to the 2010 ACS declined more for households that had one or more noncitizens in comparison to the 2010 census, on the one hand, as in comparison to households that consisted solely of citizens, correct?

A. Yes, you've got the contrast correct.

Q. OK. And the magnitude of that difference was 5.1 percentage points, correct?

A. Yes, that's correct.

MR. HO: Let's bring up page 5 of your memo, and I want to ask about the first paragraph, last sentence.

Q. You wrote that, "It is therefore a reasonable inference that a question on citizenship would lead to some decline in overall self-response because it would make the 2020 census modestly more burdensome in the direct sense and potentially much more burdensome in the indirect sense that it would lead to a larger decline in self-response for noncitizen households." Did I read that right?

A. Yes, you did.

Q. And when you say noncitizen households, you mean a household, for purposes of this analysis, that has one or more noncitizens in it, correct?

A. Yes, that's correct.

Q. Now, it's fair to say that this 5.1 percentage point estimate at the time, that you considered that a conservative estimate of the differential impact of a citizenship question on the self-response rates of noncitizens as compared to citizens if you were to place such a question on the 2020 census, correct?

A. Yes, I believe I have characterized that estimate as conservative, but we haven't discussed exactly what a statistician might mean by conservative. What I mean in this context is that it is performed in the context of a natural experiment, although you haven't used those words yet.

THE WITNESS: Your Honor, "natural experiment" is the technical name for the way this analysis was conducted. Happy to elaborate if you have questions.

BY MR. HO:

Q. I'll have plenty of questions unpacking what you mean by conservative, and we're going to spend some talking about what a natural experiment means too, Dr. Abowd. Don't worry. But let's just stick with my questions for now, and my question is at the time that you wrote this memo, 5.1 percentage points was your best conservative estimate of the effect of adding a

citizenship question in terms of the differential impact of self-responses of noncitizen households as compared to citizen households if you were to put that question on the 2020 census. Correct?

A. Yes, that's correct.

MR. HO: Let's turn to page 6 of your memo. I want to ask you about the middle paragraph, the last sentence. I'm sorry. Not the last sentence, just the middle paragraph here.

Q. Now, in this memo, for purposes of calculating some of your estimates, you expect there are about 126 million occupied households to be enumerated in the 2020 census, is that right?

A. Yes, that's correct.

Q. And you estimate that 9.8 percent of households contained at least one noncitizen, correct?

A. Yes, that's correct.

Q. And so a reduction of 5.1 percentage points in the self-response of those households would translate to about 630,000 households, correct?

A. 630,000 households in NRFU that would not otherwise have been there, yes.

Q. OK. And that likely translates into millions of people, right, Dr. Abowd?

A. At average household sizes, it's more than a million people, yes.

Q. Now, today, the Census Bureau's best conservative estimate of the differential effect of adding a citizenship question to the census in

terms of self-responses of all citizen households to other households is not 5.1 percentage points, right,

Dr. Abowd?

A. Yes, that's correct.

Q. Today, the best conservative estimate of the Census Bureau for that differential effect in self-response is 5.8 percentage points, correct?

A. Best estimate we have at the moment is 5.8 percentage points.

MR. HO: OK. Let's bring up Plaintiffs' Exhibit 162, which is also Defendants' Exhibit 2. For the record, it's been admitted.

Q. Dr. Abowd, we talked about a white paper earlier and how you were charged with putting a white paper together. Do you remember that?

A. Yes, I do.

Q. Is this the white paper?

A. This is the most recent version of the technical report performed under my supervision, yes.

Q. And you've been sitting through trial for the last week or so; sometimes people have referred to this as the Brown memo during their testimony, right?

A. Yes, I believe that's right.

Q. OK, so white paper, Brown memo, different colors, different names, but the same document, right?

A. Yes, in deference to the authors, I usually call it Brown *et al.*

Q. OK. The analysis in Brown *et al.*, or the white paper, that was begun in response to the Department of Justice's request for block-level CVAP data, correct?

A. Yes, that's correct.

Q. And the authors of this paper, they're a subset of the SWAT team that you assembled, right?

A. Yes, that's correct.

Q. And you chose the best people at the Census Bureau for conducting the analysis that's reflected in the Brown memo, correct?

A. Yes, I did.

Q. And this white paper, this version here, dated August 6, 2016, you've described this as an extended and more up-to-date version of the analysis that you relied on when you prepared your January memo to Secretary Ross, Plaintiffs' Exhibit 22, right?

A. Yes, I did.

Q. Now, this is the most recent version of the white paper available, correct?

A. Yes, it is.

MR. HO: Just as a brief aside, I want to bring up Plaintiffs' Exhibit 4, and I want to look at page AR-11634, which should be about page 8,000-something in here. Sorry.

Q. While he's bringing this on the screen, I just want to ask you, Dr. Abowd, your understanding

is that there's an earlier draft of the Brown *et al.* paper, the white memo that is contained in the administrative record in this case, right?

A. It's my understanding that an earlier draft was produced in discovery, yes.

Q. And is part of the administrative record in this case, correct?

A. I believe there's some discussion on the record of finding the Bates number for it, but that is my understanding, yes.

Q. OK. We'll come back to this and identify it at a later time, but I just want to ask you, Dr. Abowd, you believe that the analysis reflected in the Brown *et al.* memo was methodologically appropriate, right?

A. Yes, I do.

Q. And you believe that the Brown memo constitutes the best analysis that the Census Bureau can do of the consequences of adding the citizenship question to the 2020 census, right?

A. With the available data, correct.

Q. And there are no conclusions in the Brown memo that the Census Bureau disagrees with, correct?

A. That's correct.

Q. OK. The analysis that produced the 5.8 percentage point estimate, the best conservative estimate of the differential effect of the citizenship question on self-responses, that's contained in the Brown memo, right?

A. Yes, it is.

MR. HO: Let's turn to page 39 of the Brown memo.

Q. And looking at table 9, the second panel here on table 9, on the bottom half of the table, with the minus 5.8 percentage point figure there, that's the, where the.58 percentage point estimate is found in this paper, correct?

PAGES 900 TO 902

BY MR. HO:

Q. And the reason you like the 5.8 percentage point estimate better is because you think that when you're trying to assess the impact of a citizenship question today, it is more reliable to use more recent ACS data, correct?

A. You wanted more currency, that's correct.

Q. And you view this five point — I'm sorry. Let me start that question again.

When you look at that 5.8 percentage point estimate and you view it in light of the 3.3 percentage point estimate from the 2000 short form and long form comparison and the 5.1 percentage point estimate from the 2010 census and ACS 2010 ACS comparison, you agree that this 5.8 percentage point figure is an indicator that nonresponse rates to surveys with a citizenship question are increasing for households that might have a noncitizen, right?

A. I think we discussed this before. I've said that I am reluctant as a statistician to fit a trim line to

those three numbers, but I did say that 5.8 is bigger than 5.1 and 5.1 is bigger than 3.3.

Q. Dr. Abowd, the 5.8 percentage point estimate, that is a conservative estimate, right?

A. We still haven't discussed what a statistician would mean by conservative, but assuming we are using that as an undefined term for the moment, yes.

Q. Lets define it.

One of the reasons why you consider the 5.8 percentage point estimate conservative is that it is based on ACS data, right, but the citizenship question could have more prominence on the decennial census questionnaire, correct?

A. The reason that I have characterized the 5.8 percentage point estimate as conservative is because it was translated into what I believe, and others at the Census Bureau believe, is a conservative estimate of the cost implications of that self-response.

As a point estimate itself, it is what it is. It is the best available point estimate of the decline in self-response that the data could produce. So it was used in a conservative way in the sense that it produced a conservative cost estimate. A point estimate has a standard error band around it, and in that sense, it is as good as the analysis that led up to it can be for the purposes of estimating the decline in self-response rates.

Q. Dr. Abowd, I didn't ask you about all the different reasons why you would describe it as a

conservative estimate. My question was much simpler than that. It was simply this.

One reason why the 5.8 percentage point estimate is conservative is because it is based on a comparison of self-response rates on the ACS, but a citizenship question on the decennial census questionnaire, which is much shorter, could have much more prominence.

You agree with that, right, Dr. Abowd?

A. I didn't think I heard the "could" the first time, but yes, I do agree with that statement.

Q. Now, the greater prominence of a citizenship question on the decennial census questionnaire means that it could have a larger effect in terms of depressing self-response rates to the questionnaire than a citizenship question would have when placed among the dozens of questions on the ACS, correct?

A. That's what could have a greater impact means, yes.

Q. Now, another issue is that the 5.8 percentage point estimate as we discussed earlier, that is based on 2016 data, which is more recent than 2010 data, right?

A. Yes, that's correct.

Q. And, Dr. Abowd, you agree that a question that was already sensitive at one point could become more sensitive at a later time due to a change in the political environment, right?

A. Yes, it could.

Q. And it is safe to say that if something happened after 2016 that might have made citizenship a more salient issue, that that would not be reflected in your 5.8 percentage point estimate, correct?

A. Anything that happened after 2016 would not be reflected in that estimate, correct.

Q. OK. We'll come back to that later.

PAGES 906 TO 908

header. Starting with in the period.

Now, in this paragraph, you're describing an analysis of item nonresponse rates to the citizenship question on the American Community Survey, right?

A. Yes, that's correct.

Q. And you're looking at item nonresponse rates on the American Community Survey from 2013 to 2016, right?

A. Yes, that's correct.

Q. And in that analysis, you're comparing racial and ethnic subgroups, correct?

A. Yes.

Q. And you found that the item nonresponse rate to the citizenship question for the mail in ACS for non-Hispanic whites during this period raged from 6 to 6.3 percent, correct?

A. Yes.

Q. And you also found that during the same period, the item nonresponse on the citizenship

question for the mail in ACS for non-Hispanic blacks ranged from 12 percent to 12.6 percent, correct?

A. Correct.

Q. So that is twice as high as the item nonresponse rate during this period on the ACS citizenship question for blacks as compared to non-Hispanic whites, correct?

A. Correct.

Q. You also found during this period that the item nonresponse rate on the citizenship question for the mail-in ACS for Hispanics ranged from 11.6 percent to 12.3 percent, correct?

A. Correct.

Q. And you also looked at the ISR instrument.

That's the Internet version of the ACS, correct?

A. Yes, that's correct.

Q. So in 2016, the Internet ACS item nonresponse rates for the citizenship question for non-Hispanic whites was 6.2 percent, correct?

A. Yes.

Q. But for Hispanics, the item nonresponse rate to the citizenship question on the Internet version of the ACS was more than twice as high, it was 15.5 percent, correct?

A. I am pausing because you highlighted the 2013 answer first, and then the 2016 answer, I think. Unless I'm just confused reading the text.

Q. I think you're right. But the numbers for item nonresponse on the 2013 and 2016 ISR for non-Hispanic whites were the same, right, Dr. Abowd, 6.2 percent?

A. Yes. OK. All right.

Q. If we compare the 2016 ACS item nonresponse for non-Hispanic whites to Hispanics, it is 6.2 percent for non-Hispanic whites, 15.5 percent for Hispanic whites?

A. That's correct.

Q. More than twice as high for Hispanics, correct?

A. Correct.

Q. You would characterize the item nonresponse rate for Hispanics on the 2016 ACS Internet version for the citizenship question as much higher than they are for non-Hispanic whites, right?

A. I believe that is what I said, yes.

THE COURT: Can I interrupt for one moment?

Can you tell me what the Internet version of the ACS is, who does that, and how it differs?

THE WITNESS: Yes, your Honor.

American Community Survey has a fixed set of questions, but they are delivered in two formats. One is a paper questionnaire that you fill out with pencil and mail back, but you can also elect to do it online. And you go to our website and you bring up the questionnaire and put in your invitation to respond, and then you're asked the questions in

an online instrument. You are still self-administering. You take the ACS in an Internet instrument, which we call an Internet self-response instrument.

THE COURT: All right. When you say invited to, is that you received the form in the mail and it instructs you that you can either fill it out and mail it back, or alternatively, you can go online and do it online?

THE WITNESS: That's correct.

THE COURT: What proportion of the people who respond use the Internet version versus the paper version?

THE WITNESS: Oh, I have memorized so many numbers for this trial. I don't have that one memorized.

It is a substantially higher proportion use the Internet self-response instrument than the mail-back instrument, but I don't recall the exact proportions, your Honor.

THE COURT: Do you know or do you have an opinion why the rates would differ on the Internet version versus the paper version?

Is there some difference that you know of or understand with respect to the population that does it on the internet versus mailing it in?

THE WITNESS: Generically, the reason why the item nonresponse rates differ on an Internet self-response instrument is because we sometimes prompt and we sometimes let the items go through without prompting. We generally prompt on

demographic items, including items, like, race and ethnicity.

THE COURT: When you say prompt, what do you mean?

THE WITNESS: Make sure that the respondent didn't want to respond to that question.

THE COURT: So in other words, you would say are you sure you didn't want to respond to the previous question or something of that nature?

THE WITNESS: Yes, something like that.

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THE COURT: And obviously you can't do that on the paper form?

THE WITNESS: That's correct.

THE COURT: Mr. Ho.

MR. HO: Thank you, your Honor.

BY MR. HO:

Q. Dr. Abowd, you included this analysis of item nonresponse to the citizenship question on the American Community Survey because it suggests or, I'm sorry, because it is suggestive statistical evidence that a citizenship question on the census could see higher nonresponse rates from Hispanics as compared to non-Hispanic whites, correct?

A. Yes.

Q. I just want to talk about change over time here.

According to your memo for non-Hispanic whites, the item nonresponse rate to the

citizenship question on the ACS between 2013 and 2016 either didn't change at all on the Internet or didn't change much for the mail-in version, right?

A. For which group?

Q. Non-Hispanic whites.

A. Correct.

Q. But item nonresponse to the citizenship question on the ACS increased for Hispanics during the same period of time, correct?

A. Yes, it did. I think it is called out on the paragraph

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different questions on it. The item nonresponse rate for sex, which is the blue bar; for age, which is the — I think that is orange, might be red hashed bar; and for citizenship, which is the gray bar.

Then the first set of three bars is for all respondents. The next set is non-Hispanic white.

THE COURT: I missed the bottom labels. Sorry about that. Thank you.

THE WITNESS: No problem.

MR. HO: I'm sorry. I should have pointed that out, your Honor.

BY MR. HO:

Q. Can we now turn to the breakoff rate analysis, the third analysis in your January memo, page five of Plaintiffs' Exhibit 22. I want to look under header B3, breakoff rate analysis.

This is the part of your memo where you describe the analysis of breakoff data for the 2016 ACS, correct?

A. Yes, it is.

Q. Just to define it, a breakoff rate is the rate at which, when people are responding to the ACS questionnaire online, they stop answering the survey upon encountering a screen with a particular question, correct?

A. Yes, that is how it is defined.

Q. In 2016, breakoff rates on the citizenship question on the ACS for Hispanic were much higher than they were for non-Hispanic whites, correct?

A. I think you're summarizing the second sentence in the second paragraph, and that's correct.

Q. As the data is presented in this memo, the breakoff rate on the citizenship question on the 2016 ACS for Hispanic was eight times what it was for non-Hispanic whites, correct?

A. Yes, that's correct.

Q. This breakoff rate analysis indicates that the citizenship question is more sensitive for Hispanic than for non-Hispanic whites, correct?

A. That is what we concluded, correct.

Q. Now, it is also correct, Dr. Abowd, that the difference in breakoff rates for Hispanic as compared to non-Hispanic whites is much higher for questions concerning year of entry and citizenship than for any other of the questions on

the ACS with the exception of English proficiency, correct?

A. So I'm happy to go over those data with you if you bring up the chart, but I don't have them memorized. It is one of the high breakoff rates. I am willing to say that without seeing the table.

Q. OK. Lets bring up the white paper, Plaintiffs' Exhibit 162, and page ten. Lets look at the last paragraph here.

Starting with the second to last sentence, citizenship related questions. Why don't you go ahead and read that to yourself, Dr. Abowd, and let me know when you're ready.

(Pause)

A. Yes, I've read it.

Q. So it is correct, right, Dr. Abowd, that breakoff rates for the citizenship question on the ACS for Hispanics are much higher than for non-Hispanic whites generally, first of all, that's correct, right?

A. That's correct.

Q. And that the difference between those breakoff rates is higher for questions concerning year of entry and citizenship than for any other question on the ACS, with the exception of English language proficiency, correct?

A. Yes, that's correct.

Q. Now, your January memo presents only 2016 ACS breakoff data, correct?

A. That's correct.

Q. But the Brown memo here also has 20 — I'm sorry. Strike that.

The reason why your memo to Secretary Ross only has 2016 breakoff data in it is because the 2017 ACS breakoff data was incomplete as of that time, correct?

A. That's correct.

Q. But the swat team has looked at 2017 ACS breakoff data, right?

A. Yes, they are.

Q. And the Census Bureau has now made the 2017 ACS breakoff data available as part of this litigation, correct?

A. We released it as a public document, yes.

Q. OK. Lets turn to Plaintiffs' Exhibit 9. This has been admitted.

Dr. Abowd, this is a table summarizing the rate at which different groups break off on the ACS on different questions, correct?

A. Yes. That's correct.

Q. If we go down to citizenship, the left-hand column, the breakoff rate for non-Hispanic whites on the citizenship question in the 2017 ACS is .03489, correct?

A. Yes, I see it. Yes, that's correct.

Q. OK. The citizenship question breakoff rate on the 2017 ACS for Hispanic is .4343, correct?

A. The highlighting just disappeared.

Yes, that's correct.

Q. OK. So just to summarize this, it is correct to say that the citizenship question breakoff rate on the 2017 ACS for Hispanic is more than 12 times what it is for non-Hispanic whites, correct?

A. Yes, that's correct.

Q. OK. So just to summarize, in 2016, the Hispanic breakoff rate was eight times what it was for whites, in 2017, it was 12 times what it was for whites, correct?

MR. EHRLICH: Objection, asked and answered.

THE COURT: Overruled.

A. Yes, it's correct.

Q. It is fair to say that in your January memo to Secretary Ross, you concluded that adding a citizenship question would be a sensitive question for Hispanics, correct?

A. I believe we did, yes.

Q. You believe, Dr. Abowd, that Hispanic are more sensitive to survey questions about citizenship than they were a few years ago, correct?

A. Yes, that is what's the data appear to show.

Q. That increased sensitivity, you would agree, is reflected in the 2017 ACS data, correct?

A. Increased sensitivity is reflected in the 2017 data, yes.

Q. That postdates your 5.8 percentage point estimate, which was based only on data through the 2016 ACS, correct?

A. That's correct.

Q. Non-Hispanic whites by contrast, Dr. Abowd, are not more sensitive to survey questions about citizenship than they were a few years ago, correct?

A. I think, are you characterizing all the evidence?

In which case I think that is probably right.

Q. Yes.

A. OK.

Q. I am characterizing all of the evidence.

Is that correct?

A. Yes.

Q. Dr. Abowd, the Census Bureau believes that Hispanics will respond to the citizenship question on the 2020 census at lower rates than non-Hispanic whites, correct?

A. To the extent that Hispanicity is related — to ethnic origin Hispanic is related to a household that potentially contains at least one noncitizen, we have credible quantitative evidence that there could be a lower self-response rate, yes.

Q. Dr. Abowd, it is fair to say that you believe that unit self-response rates, that is, refusing to self-respond to the 2020 census questionnaire at all, that that will happen at a higher rate for Hispanics than non-Hispanic whites as a result of the citizenship question, correct?

A. So what I think I've said consistently is the Hispanic origin, Hispanic ethnicity, is highly

correlated with being in what we would call the treatment group from that natural experiment. To the extent that that correlation is true. The conclusions of the natural experiment hold.

Q. The answer to my question is yes, Dr. Abowd?

A. I am trying to qualify that we didn't specifically analyze it for Hispanics, because that is not the question that the data analysis addressed.

But I concur that they are highly correlated with the households that may include a noncitizen or person of unknown citizenship status.

To that extent, the conclusion is correct.

Q. Dr. Abowd, you agree, do you not, that the analysis of item nonresponse on the ACS and breakoff rates to the ACS for Hispanics suggests that response rates to the 2020 census will fall more for Hispanics than for non-Hispanic whites as a result of the citizenship question, correct?

A. Item response rates on the citizenship question, that's what that shows.

Q. That's not my question, Dr. Abowd.

A. That is why I answered what I did.

Q. OK. But my question, Dr. Abowd, is this: You agree, do you not, that the item nonresponse rate analysis that you conducted for the ACS and the breakoff rate analysis that you conducted for the ACS, suggest that unit nonresponse on the 2020 census will decline more for Hispanics than for non-Hispanic whites as a result of the citizenship question, correct?

MR. EHRLICH: Objection.

THE COURT: Basis?

MR. EHRLICH: Asked and answered several times, your Honor.

THE COURT: I don't think it has been answered.

Overruled.

A. I imagine you're going to show me in the record why you think I've already said that.

All I want to say is that, to the extent that Hispanic and being in the treatment group for the natural experiment are highly correlated, that would justify that conclusion.

The breakoff analysis and the item analysis justify the conclusion that the citizenship question itself won't be responded to as at higher rate by Hispanics.

THE COURT: Is there a high correlation between the treatment group and Hispanic origin?

THE WITNESS: Yes, your Honor, there is.

MR. HO: Thank you, your Honor.

BY MR. HO:

Q. You used the phrase natural experiment or the term natural experiment before.

Do you remember that, Dr. Abowd?

A. Yes, I do.

Q. Would you agree that a natural experiment is an observational study in which one group of

individuals has been exposed to control conditions while another group has been exposed to treatment conditions, such that a change in outcome between the two groups could plausibly be ascribed to the treatment?

A. I agree with everything that you said and would add that the definitions that put you into either the treatment or the control group have to contain some element of natural randomization.

Q. Here, the control is for purpose — when we talk about the natural experiments that you conducted here, the control is the 2010 decennial census questionnaire without a citizenship question, and the treatment is the 2010 ACS or the 2016 ACS, which has a citizenship question, correct?

A. Technically, the treatment is the change, but yes, that's basically right.

Q. The premise then behind this natural experiment is that it is reasonable to infer that a differential lower self-response on the ACS questionnaire for households that have a noncitizen or a person of unknown citizenship status is due to the citizenship question on the ACS, which is sensitive for that population, correct?

A. So the goal of the natural experiment is to do that difference indifference with the plausible, the actual randomization, which in this case is who got the ACS — that's a random subset of the population — and then to explore the answer you get to make sure that there aren't confounders that could have explained that difference in the

case of the comparison of the ACS to the 2010 census. There are potential confounders. So the initial analysis did not make any effort to control for those confounders and the subsequent analyses did.

Q. Dr. Abowd, you would characterize the analysis that is reflected in your January memo as a well-designed natural experiment, correct?

A. Yes.

Q. Dr. Abowd, notwithstanding what Secretary Ross says in his memo about evidence of an effect of a citizenship question on self-response rates, you believe that the Census Bureau did provide empirical support for its belief that adding a citizenship question will reduce response rates to the 2020 census, correct?

A. Self-response rates, correct.

Q. And, in fact, Dr. Abowd, when you met with Secretary Ross on February 12, you told him that the Census Bureau thought that the difference in self-response rates on the ACS and the census, when comparing citizen and noncitizen households, was probably related to the citizenship question on the ACS, correct?

A. That's my recollection, yes.

Q. Dr. Abowd, I want to bring up again your January memo, Plaintiffs' Exhibit 22, page five. I want to look at the last sentence.

I'm sorry. We want Dr. Abowd's January memo, which I believe is Plaintiffs' Exhibit 22. Maybe I have that number wrong.

THE COURT: I believe that is right.

MR. HO: It is 22, page five. I want to look at the

PAGES 923 TO 924

last sentence.

Sorry. The last sentence of the first paragraph.

Excuse me.

Sorry. I guess I have this wrong again. The top paragraph, last sentence.

Thanks.

BY MR. HO:

Q. You wrote in your memo: It is therefore a reasonable inference that a question on citizenship would lead to some decline in overall self-response because it would make the 2020 census modestly more burdensome in the direct sense and potentially much more burdensome in the indirect sense that it would lead to a larger decline in self-response for noncitizen households, correct?

A. That is what it says, yes.

Q. And here, that is consistent with what your opinion is about having produced credible qualitative evidence of the effect of the citizenship question on self-response rates, correct?

A. Yes, that's correct.

Q. Now, this opinion, which is based on a natural experiment, Dr. Abowd, that is not the same as a randomized control test or RCT, correct?

A. That's correct.

Q. If you had done an RCT, that would have been if you had conducted a new randomized experiment with control and treatment groups instead of trying to observe something that had already occurred, correct?

A. There is more to it than that, but that is — all that you said is correct.

Q. OK. An RCT, that would provide what you would describe as gold standard evidence for assessing the effect of a citizenship question on response rates, correct?

A. Yes, that's correct.

Q. OK. If the Census Bureau had conducted an RCT, it would have had quantitative data that could isolate the effect of a citizenship question in terms of how that would perform in the context of the decennial census enumeration questionnaire, correct?

A. If there had been an RCT available, we would have been able to make an internally valid comparison of a questionnaire with and without a citizenship question as to its effect on self-response rates for the whole population.

Q. Do you remember in Secretary Ross' memo where he uses the word isolate and he said that the Census Bureau could not isolate the percentage in the self-response decline that could be attributable to the citizenship question?

Does that ring a bell?

A. A sentence like that rings a bell, yes.

Q. If you had conducted an RCT, you could have isolated the

PAGES 927 TO 934

A. Yes, it is.

Q. So the political context can affect response rates, correct?

A. Yes, it can.

Q. You agree that the political environment around immigration could amplify the effect of a citizenship question on response rates in comparison to, say, 2010, correct?

A. Yes, it could.

Q. And it could do that in comparison to, say, 2016, correct?

A. Yes, it could.

Q. You know, the last time there was an inquiry of the citizenship status of every member of every household in the United States was 1950, correct?

A. Yes, that's correct.

Q. You would agree that the macro environment is a little different now, right, Dr. Abowd?

A. Well, I'm not a macro economist, but I think it is, yes.

Q. I want to ask you about CBAMs research, Dr. Abowd.

CBAMs stands for census barriers, attitudes, and Motivator studies, correct?

A. Excuse me. Yes, it is.

Q. The CBAMs research, that tells you a little something about the macro environment, right?

A. That is what it was designed to do, yes.

Q. OK. CBAMs consists of a survey of 50,000 households in a series of more than 40 focus groups, correct?

A. 42 focus groups.

Q. The primary reason for conducting CBAMs is to inform the integrated partnership and communication program for the 2020 census, correct?

A. Yes, that's correct.

Q. The Census Bureau finds that the CBAMs research that you do is sufficiently reliable as to provide actionable information that informs the communication and partnership campaigns conducted by the Census Bureau predicting, correct?

A. Yes, that's correct.

Q. Lets look at Plaintiffs' Exhibit 163. I believe this has been admitted into the record.

Dr. Abowd, this is a PowerPoint summarizing rising information from the 2018 CBAMs focus groups, correct?

A. I am only pausing because I am not sure it is exclusively the focus groups, but it is about the CBAMs research.

Q. This PowerPoint was created by Young & Rubicam at the direction of the Census Bureau, correct?

A. Young & Rubicam is the prime contractor on the integrated communication contract. It is working with a team of internal Census Bureau specialists. They jointly prepared this PowerPoint labeled with both logos, I believe.

Q. This PowerPoint was presented to Under Secretary Kelley and to Secretary Ross, correct?

A. I believe I testified at deposition that I believe that is correct, but I wasn't at either of those — I wasn't at the presentation of the Under Secretary, so I'm not sure whether this is exactly the same one that she saw and the Secretary saw. I believe the content was very similar, but that is what I know.

Q. You were in the room when this was presented to Secretary Ross?

A. I was in the room when a similar presentation was made to Secretary Ross that had a different date on it.

Q. But it was materially identical to the PowerPoint here before you, correct?

A. Yes, that's right.

Q. You're not aware of any revised or more recent versions of this PowerPoint?

A. No, I'm not.

Q. Lets turn —

A. Actually, excuse me, I haven't compared this PowerPoint to the recent presentation to the National Advisory Committee, so I think, absent that comparison, I didn't notice any big differences. They give a more comprehensive

version than what I remember being presented to the Secretary, but I don't think that the general conclusions or even a lot of the specific conclusions are very different.

Q. We'll go over that PowerPoint too, Dr. Abowd.

Lets stick with this one for now.

A. All right.

Q. And look at page five, which I believe is page six of the PDF. So the next page. Thank you.

The title of this slide is Distrust in Census and Government May Complicate Outreach to Some Communities, correct?

A. Yes, it is.

Q. OK. The second bullet from the bottom reads: A number of focus group participants responded negatively to adding the citizenship question, most notably Spanish (U.S. mainland) as well as Vietnamese, Chinese, NHPI, and members of the female MENA group.

Did I read that right?

A. Yes, you did.

Q. Now, most of these focus groups were conducted after the announcement of a citizenship question to be included in the census, correct?

A. 30 of 42, yes.

Q. And people recruited into the focus groups referenced in that bullet that we just discussed, they mentioned the citizenship question as a barrier to census participation, correct?

A. Yes, that's correct.

Q. This bullet in this PowerPoint was included to draw the attention of the people for whom the PowerPoint was intended, correct?

A. Would you mind restating that question? I couldn't unpack it.

Q. Sure.

This bullet, starting with the number of focus group participants, that was included in this PowerPoint in order to draw the attention of the people for whom the PowerPoint is intended, right, Dr. Abowd?

MR. EHRLICH: Objection.

THE COURT: Sustained.

Q. Dr. Abowd, why was this bullet included in the PowerPoint?

A. The PowerPoint was prepared, as I understand it, to inform the Under Secretary.

Q. But why was this particular bullet included in the PowerPoint?

A. It summarizes one of the conclusions of the CBAMs focus group studies.

Q. Dr. Abowd, do you remember your third deposition in this case which occurred on October 5, 2018?

A. Yes.

Q. You were under oath that day, right?

A. Yes, I was.

Q. And you told the truth that day, right?

A. Yes, I did.

Q. OK. Lets bring that up and look at page four 43, starting with line five.

"Q. And why was this bullet included in the PowerPoint?

"A. I believe to draw the attention of people who are using this to — that finding of the focus groups.

Q. Was that my question — was that the question that was posed to you and your answer that day, Dr. Abowd?

A. Yes, it was.

Q. OK. And during the presentation of this PowerPoint to Secretary Ross, it was acknowledged that the citizenship question would be a challenge in conducting the 2020 census, correct?

A. Yes, it was.

Q. OK. Lets bring up Plaintiffs' Exhibit 152 now. This has also been admitted into the trial record.

Dr. Abowd, this is the 2020 CBAMs focus group audience summary reports, correct?

A. Yes, that's what they are.

Q. You've seen this document before, right?

A. Yes, I have.

Q. Lets go to page 22 of this document, which is Bates number 13046.

This is part of the summary for focus groups consisting of participants who are U.S. mainland residents who speak Spanish, correct?

I believe that is at the top of the page.

A. This is the top of the page you said who speaks Spanish. I know there was both a Spanish-speaking Spanish and an English-speaking Spanish, so I'm not sure whether this particular page is both or one.

Q. When you say Spanish U.S. mainland, what does that refer to?

A. It means that the people recruited for this focus group were Hispanic origin and living in the U.S. mainland.

Q. Lets look at the third bolded paragraph on this summary.

The title or the first sentence is the citizenship question is a determining factor for participation, correct?

A. Yes.

Q. It reads: All four Spanish, U.S. mainland focus groups took place after the March 27, 2018, announcement that the 2020 census will include a question on citizenship, correct?

A. Yes.

Q. And Spanish means Hispanic, Dr. Abowd, in that sentence?

A. I believe so, yes.

Q. OK. It goes on to read: Participants in all locations mentioned the citizenship question

before the moderator asked about it, except for Houston group one participants, correct?

A. Yes.

Q. And it goes on to read: Most participants said that though they personally are citizens or legal residents and are not afraid to answer the citizenship question, they know many others who will not fill out the question or the form altogether out of fear. While all participants expressed the desire to be counted, fear of deportation outweighs any benefit.

Did I read that right?

A. Yes, you did.

Q. Dr. Abowd, you agree that this focus group result is an indication from a hard-to-count population that the citizenship question viewed as extremely problematic for that population, correct?

A. It is an indicator of that, yes.

Q. And you acknowledge that with the citizenship question on the census, people who are afraid of deportation will be an extremely difficult group to count, correct?

A. They will be a very difficult group to count.

Q. Extremely, right, Dr. Abowd?

A. So I suppose we can discuss what the difference between "very" and 'extremely' is.

Q. In your words, Dr. Abowd, you would describe people, who are fearing deportation, as extremely

hard to count in the 2020 census, when you put a citizenship question on it, correct?

A. So very hard to get to self-respond. Whether they are hard to count or not depends on other operations in the 2020 census.

Q. All right. Dr. Abowd, lets go back to your October 5, 2018

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Q. And there also was an indication from focus group participants that there is a concern due to the political discourse that we currently have, correct?

A. Yes, that is what it says.

Q. OK. In the bottom left-hand corner, there is a Hispanic focus group participant who stated, A lot of people are afraid. It doesn't matter if they ask you whether or not you're a citizen. The first question they ask you, are you Hispanic or Latino? And that's enough. That's all they need and people are scared.

Do you see that?

A. Yes, I do.

Q. Do you see the one on the right that reads: Latinos will not participate out of fear. There was practically a hunt for us. Latinos are going to be afraid to be counted because of the retaliation that could happen. It's like giving the government information saying, oh, there are more here.

Correct?

A. That is what the quote says, correct.

Q. Lets turn to page 57 of the PowerPoint. Page 58 of the PDF.

This is a summary of Hispanics participating in the CBAMS research, correct?

A. Yes.

Q. So among Hispanics, 10 percent believe that the census is used to locate people living in the country without documentation, correct?

A. That's not on this slide, I don't think, but you already showed it to me. That — there it is. Yes, correct.

Q. And 34 percent express concern about the confidentiality of their answers, correct?

A. Correct.

Q. 32 percent express concern that their answers will be shared with other government agency, correct?

A. Correct.

Q. 33 percent express fear of repercussions from their census answers, correct?

A. Correct.

Q. The bullet under other considerations reads, focus group participants expressed intense fear that information will be shared with other government agency to help them find undocumented immigrants. Participants worried that their participation in the census could harm them personally or others in their communities/households they care about, correct?

A. Yes, that is what it says.

Q. That is Hispanic focus group participants, correct?

A. Correct.

Q. Now, Dr. Abowd, overall, you would describe this focus group research as qualitative research, correct?

A. That's correct.

Q. And all of the CBAMS focus group research that we have discussed happened in 2017 and '18, correct?

A. I think it all happened in 2018.

Q. All happened in 2018?

A. Yes.

Q. OK. You agree, Dr. Abowd, that the CBAMS focus group research conducted by the Census Bureau suggests a greater sensitivity to a citizenship question today than there was a few years ago, correct?

A. The CBAMS research, both the focus group and the survey, have alerted us to what we consider a major difficulty in fielding the 2020 census to regain the trust of the Hispanic community, yes.

Q. The research suggests that the macro environment today, which affects the sensitivity of citizenship questions on Census Bureau surveys, is different than it was a few years ago, correct, Dr. Abowd?

A. So the research that you just showed me doesn't support an inference of change, so I won't make one.

But it does support that it is a major concern now, whether it is greater or less than it was for the 2010 census. It wasn't supported by what you said, but it does support that it is a major concern now.

Q. Dr. Abowd, the sensitivity to a citizenship question that's

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Q. And that's some qualitative evidence suggesting that questions related to immigration status asked by the Census Bureau have a greater sensitivity today than they did a few years ago, correct?

A. Yes, it is.

MR. HO: Dr. Abowd, I want to go back to your January memo to Secretary Ross, Plaintiffs' Exhibit 22, and I want to ask you about a passage on page 5 under the header B4, cost estimates.

Q. Dr. Abowd, the lower self-response rates resulting from the addition of a citizenship question to the 2020 census, you would expect would increase the cost of conducting the 2020 census, correct?

A. That's correct.

Q. And the reason why that is is that when you have lower self-response rates, you have to try to enumerate more people through nonresponse follow-up efforts, or NRFU, correct?

A. That's correct.

Q. And NRFU costs money, right?

A. Yes, it does.

Q. Part of the NRFU process includes sending Census Bureau enumerators in person to nonresponding households, correct?

A. That's correct.

MR. HO: Let's turn to page 6 of your memo and the second-to-last paragraph, if we could blow it up.

Q. This paragraph describes the cost estimates that you presented in this memo for the estimated cost of including the citizenship question on the 2020 census, correct?

A. That's correct.

Q. And in this memo, you estimated that the inclusion of the question could increase NRFU costs by at least $27.5 million, correct?

A. Yes, that's correct.

MR. HO: And if we could blow up the last paragraph on this page.

Q. Dr. Abowd, as you presented your findings in this memo, you describe the $27.5 million estimate as a conservative estimate, is that correct?

A. That's correct.

Q. And one reason why it's a conservative estimate is because the differences in self-response rates to the 2020 census between citizen

and noncitizen households may be even greater than estimated in this memo, correct?

A. That's correct.

Q. And so, the memo describes the $27.5 million cost as a lower-bound estimate, correct?

A. Yes, that's correct.

Q. Now, one reason why you describe it as a lower-bound estimate in your memo is that the estimate assumes that — well, strike that.

MR. HO: Let me try that again.

Q. One reason why you describe this as a lower-bound estimate in your memo is that it may take more NRFU visits to enumerate households that don't respond to the citizenship question than you assumed in generating the $27.5 million estimate, correct?

A. That's one of the reasons, yes.

Q. And another reason is that this lower-bound cost estimate does not incorporate any estimate about the effect of a citizenship question on reducing self-response rates from all citizen households, correct?

A. That's correct.

Q. And another reason why this estimate is conservative and a lower-bound estimate is that it does not capture increased communication campaign costs that may be needed as a result of the citizenship question, correct?

A. That's correct.

MR. HO: I want to bring us back to page 1 of the memo, and I just want to look at the last sentence on page 1.

Q. Given everything that we've described, Dr. Abowd, your memo describes adding a citizenship question to the 2020 census as very costly, correct?

A. Correct.

Q. Now, the lower self-response rates resulting from the addition of the citizenship question will also reduce the quality of the data resulting from the 2020 census, correct?

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A. Or a survey response, yes.

Q. Now, you agree, Dr. Abowd, that if someone is coded in administrative records as a noncitizen, then it's reasonable to conclude that that person is, in fact, a noncitizen, correct?

A. At the time at which the coding was done, yes.

Q. And you believe that when someone's ACS response says that they are a citizen but the administrative records says that they're not a citizen, then the most likely conclusion is that the person is, in fact, a noncitizen, correct?

A. The survey response was citizen and the administrative record response was noncitizen?

Q. Yes.

A. Correct, insofar as the administrative record is contemporaneous with the survey response, yes.

Q. If all you have is an administrative record and all you have is a survey response, the administrative record says noncitizen, survey response says citizen, then you'd agree that it's more likely than not that that person's a noncitizen, right?

A. That's correct.

Q. So, Dr. Abowd, is it correct to say that citizenship status is one characteristic where you believe that administrative records tend to be more accurate than survey responses?

A. Yes, that's correct.

MR. HO: Let's bring back up Plaintiffs' Exhibit 22, your January memo, page 8. I want to look at the second full paragraph.

Q. Now, according to your memo, in the 2016 ACS, individuals whom the administrative records indicate are noncitizens responded "citizen" 34.7 percent of the time on the ACS citizenship question, correct?

A. Did you say 2016; that's the number you read?

Q. Yes.

A. Yes.

Q. And overall, in the Census Bureau's research on this issue, you've determined that for people for whom the administrative records indicate that they're noncitizens, there's disagreement between the administrative record and the ACS survey response between 30 to 37 percent of the time, correct?

A. That's correct.

Q. And you'd agree, then, given what we discussed earlier, that it's likely that for more than 30 percent of noncitizens who provide a response to the ACS citizenship question, the response is incorrect, right?

A. Response is in disagreement with the administrative record and probably incorrect.

Q. Now, the Census Bureau has no empirical basis to believe that noncitizens for whom a response is provided to a citizenship question on the census will have more accurate responses than they do to the citizenship question on the ACS, correct?

A. That's correct.

Q. And in fact, Dr. Abowd, the Census Bureau believes that there are definitely indications that responses by noncitizens to a citizenship question on the 2020 census will be even less accurate than they have historically been on the ACS, correct?

A. That's correct.

Q. The Census Bureau still hasn't made any determination about how it will address disagreement between survey responses and the administrative records when producing block-level CVAP data for the Department of Justice after the 2020 census, correct?

A. For a public-use tabulation that will be used by the Department of Justice, that's correct.

Q. Now, alternative C, Dr. Abowd, is to use administrative data and no citizenship question to collect citizenship data and then to rely

principally on that administrative data to produce block-level CVAP data for the Department of Justice, correct?

A. That's correct.

Q. And under alternative C, you would take responses to the census questionnaire and then link those responses to administrative data with citizenship information in it, correct?

A. That's correct.

Q. And the particular administrative records that you would use under alternative C are the social security numerical identification system, or NumIdent, data, correct?

A. I've never heard the acronym expanded, but yes, NumIdent is the correct file.

MR. HO: Let's bring your memo back up, Plaintiffs' Exhibit 22. I want to look at the first page, the last paragraph, second sentence.

Q. Dr. Abowd, the conclusion that you reached in your memo is that unlike including a citizenship question, using administrative records to provide DOJ with block-level CVAP data would not harm the quality of the census count, correct?

A. As long as it's done without simultaneously asking the question on the census, yes.

Q. And if you just used the administrative records, you didn't ask the citizenship question, under alternative C, you would have to deal with a problem of survey responses and administrative records that disagree, correct?

A. Correct.

Q. And so, the Census Bureau concluded that using administrative records would deliver higher quality block-level CVAP data by race and ethnicity than including a citizenship question on the census, correct?

A. Yes.

Q. The Census Bureau's proposal to generate such block-level CVAP data using administrative records rather than a citizenship question had the backing of the Census Bureau's redistricting office, correct?

A. Yes, it did.

Q. Now, this memo also concludes that using administrative records would be far less costly than including a citizenship question on the 2020 census, correct?

A. That's correct.

Q. And part of the reason is that if you use administrative records but you don't include a citizenship question on the census, you don't have increased NRFU costs, correct?

A. That's correct.

Q. And the conclusion of the Census Bureau that was reached in this memo is that using administrative records and not including a citizenship question on the census would best meet DOJ's stated uses, correct?

A. That's correct.

Q. And you communicated that conclusion to Secretary Ross during your meeting with him on February 12, 2018, correct?

A. Yes, we did.

Q. Now, the Census Bureau, during this period of time, also offered to meet with the Department of Justice to discuss its recommendations, correct?

A. That's correct.

Q. The analyses that we've been discussing, those began after Arthur Gary — or after a letter signed by Arthur Gary from the

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attorney general personally directed staff at the Department of Justice not to meet with the Census Bureau to discuss a proposal for higher quality data that the Department of Justice requested?

A. I have not, no.

Q. Are you aware of any other circumstance in which a cabinet secretary personally directed agency staff not to meet with the Census Bureau?

A. I'm not aware of any circumstances, no.

Q. Dr. Abowd, in your experience, is it unusual for the Census Bureau to receive a data request from an agency and then for that agency to refuse to meet with the Census Bureau to discuss the technical aspects of that data request?

A. Yes, it is.

Q. Now, sometime, Dr. Abowd, after your meeting with Secretary Ross on February 12, you were asked to consider a fourth alternative, which we've been referring to as option D or alternative D. Is that correct?

A. That's correct.

Q. Just so we're clear, alternative D combines both alternatives B and C; that is, you both add a citizenship question to the census and you look at administrative records on citizenship under alternative D, correct?

A. That's correct.

Q. And your understanding was that after that February 12 meeting, Secretary Ross and Undersecretary Kelley wanted you to work on alternative D, correct?

A. To evaluate it, yes, that's correct.

Q. And Acting Director Jarmin told you that, right?

A. Yes, he did.

MR. HO: I want to look at Plaintiffs' Exhibit 25.

This is admitted into the trial record as a part of the administrative record.

Q. Dr. Abowd, this is a memo under your name assessing alternative D, correct?

A. That's correct.

I want to note the watermark isn't on this page again, but it is the administrative record.

Q. I think it has something to do with the screen. I apologize for that.

But this is the version, 1.0, of the draft memo that you prepared at the request of Acting Director Jarmin on the subject of alternative D, right, Dr. Abowd?

A. That's correct.

Q. And it was directed through Acting Director Jarmin to the undersecretary and to the secretary of commerce, correct?

A. That's correct.

Q. And the views expressed in this memo are those of the senior executive straff at the Census Bureau, correct?

A. That's correct.

Q. And you're not aware of any subsequent versions of this memo, correct?

A. I am not.

MR. HO: Let's turn to page 5 of this memo, which is administrative record page 1312.

Q. The final paragraph sets forth the conclusion of the Census Bureau about alternative D in comparison to alternative C, correct?

A. Yes, it does.

Q. And you concluded that alternative D would result in poorer quality citizenship data than alternative C; it would still have all the negative cost and quality implications of alternative B outlined in the draft January 19, 2018, memo to the Department of Commerce, correct?

A. That's correct.

Q. And so, the Census Bureau did not recommend alternative D, correct?

A. That was also correct.

Q. And the Census Bureau still does not recommend alternative D, correct?

A. That's correct.

Q. But Secretary Ross selected alternative D anyway, correct?

A. The secretary instructed us to do alternative D, that's correct.

MR. HO: Now, I want to ask you about overall census data quality under C and D. And let's look at page 4 of this memo, the last full paragraph. I want to highlight the third sentence, beginning with "however," about five lines down.

Q. Now, your March memo here notes that because alternative D involves adding a citizenship question to the census, the Census Bureau expects to see the same reduction in self-response rates that you would see under alternative B, correct?

A. That's correct.

MR. HO: I want to ask you about the next sentence, starting with "not only."

Q. Your memo notes that the reduction in response rates, under alternative D, would lead to more enumerations through the NRFU process and more incorrect enumerations than you'd have under alternative C, correct?

A. Yes.

MR. HO: And then let's highlight the next sentence, starting with "in the 2010 decennial census."

Q. The memo notes that the increased number of enumerations through the NRFU process under alternative D will produce lower quality personal

data on the census responses as compared to alternative C, correct?

A. That's correct.

Q. So if your goal is to have an accurate census, then alternative C is superior to alternative D, correct?

A. That's correct.

Q. Now, under alternative D, due to the lower quality personal data on census responses from increased number of households going through NRFU, there will also be a reduction in the number of individuals whom the Census Bureau can link to administrative records, correct?

A. Yes. I thought that's what we were talking about, but yes, that's correct.

Q. OK. Well, if we look at this, here, if we look at the last sentence here, for the 2010 census, you're able to link 93 percent of self-responses to administrative records, correct?

A. Yes.

Q. But for proxy responses obtained through the NRFU process, you're only able to link 33.8 percent of such individuals through administrative records, correct?

A. That's correct.

Q. So just to be clear, under alternative D, there are going to be fewer people that you can link to administrative records than if you had — if the secretary had instead chosen alternative C, correct?

A. That's correct.

I said yes. I must be getting — I'm sorry. Yes, that's correct.

Q. OK.

MR. HO: Now, let's turn back to Secretary Ross's decision memo, Plaintiffs' Exhibit 26, and I want to look at page 5 of the memo, the first paragraph on page 5.

Q. The secretary's discussing alternative D in this paragraph, correct?

A. Yes, he is.

MR. HO: And I want to ask you about the third sentence in this paragraph, starting with "this may eliminate." I want to ask you about what Secretary Ross is referring to here.

Q. One limitation of alternative C, using administrative records, Dr. Abowd, is that not every person who is enumerated in the census can be linked to administrative records, correct?

A. That's correct.

Q. So if you rely on administrative records — excuse me, under alternative C, to produce block-level CVAP data for DOJ, there's a portion of the population for whom you're going to have to impute, or model, their citizenship status, correct?

A. I prefer model, but yes, that's correct.

Q. The secretary's decision memo suggests that under alternative D, that might eliminate the need for such modeling of citizenship status for

people who cannot be matched to administrative records, right?

A. That's what he says, yes.

Q. Dr. Abowd, you analyzed the question of whether alternative D could potentially address this gap in the administrative records, right?

A. Yes, we did.

MR. HO: All right. Let's bring your memo back up, from March, Plaintiffs' Exhibit 25. Let's look at page 4.

Q. And under the header "can survey data address the gaps in alternative C," this is the section where you address this issue that Secretary Ross is talking about in his memo that we talked about a moment ago, whether or not alternative D can effectively address that gap in the administrative records, right?

A. There may have been other paragraphs, but it's certainly discussed in this one as well.

Q. Now, under alternative D, if you get a survey response on citizenship status for someone who can't be matched to the administrative records, you're going to use that survey response, right?

A. We're going to include that survey response in the record of the 2020 census, yes.

Q. Right. I mean, you wouldn't, if you — for this group of people who can't be matched to administrative data but you get a survey response, you wouldn't model their citizenship status; you would take the survey response as to citizenship for that person, right?

A. As I think I've explained in several depositions, we've charged a high-level expert panel that I'm the chair of inside the Census Bureau to develop a scientific answer to the question you just asked. In the presence of a dual set of records on citizenship status, it isn't obvious what the best way to translate that into an estimate of citizen voting-age population is.

Q. I apologize, Dr. Abowd. My question was probably confusingly worded. I wasn't talking about people for 94 whom there are dual records. I mean people who can't be linked to the administrative record but for whom you do have a survey response as to their citizenship status. You're going to use the citizenship response for that person rather than modeling — you're going to use the survey response for that person rather than modeling their citizenship status, correct?

A. I suspect that the internal expert panel will draw that conclusion, but I want to say, once again, it is unusual to dual source this, and it's not necessarily the best scientific answer that you always use the survey if you don't have an administrative record or that you always use the administrative record when you don't have a survey. The modeled answer can be defended on objective ground, but we haven't developed it yet.

Q. There's currently no objective grounds on which if all you have about a person's citizenship status is their survey response for you to reject the survey response, correct, Dr. Abowd?

A. That's correct.

Q. Now, as we established earlier, though, Dr. Abowd, the Census Bureau believes that noncitizens give an answer to the citizenship question on the ACS that's probably wrong more than 30 percent of the time, right?

A. That disagrees with the administrative record more than 30 percent of the time, yes.

Q. And you noted in this March memo that a problem with relying on the citizenship question to fill gaps in the administrative record is that people who are not citizens have a strong incentive to provide an incorrect answer to a citizenship question if they answer at all, right?

A. That's correct.

Q. And the memo notes that even a large fraction of legal permanent residents provide incorrect answer, survey responses to the citizenship question on the ACS, correct?

A. That's correct.

Q. And so, a key difference between alternatives C and D is for this population of people for whom you can't link to administrative records, under alternative C, you model their citizenship status and, under alternative D, if you get it, you try to use the survey self-response, right?

A. I think that's a fair characterization, yes.

Q. But given the errors in survey responses to citizenship questions that we discussed earlier, this memo, Dr. Abowd, concludes that survey-collected citizenship data may not be reliable for

many of the people falling in the gaps in the administrative record, correct?

A. Correct.

MR. HO: And let's look at page 4 of your memo.

Q. The second-to-last sentence in the last paragraph, starting with "this suggests," that's where you made that conclusion in this memo, right, Dr. Abowd?

A. That's correct.

MR. HO: Let's turn to page 5 of the memo and look at the first sentence, full sentence, starting with "thus, not only are citizenship data."

Q. Your March memo to Secretary Ross, Dr. Abowd, states that citizenship survey data gathered under alternative D, it describes such data as being of "suspect quality," correct?

A. Correct.

Q. But the memo —

MR. HO: Let's flip back to page 4 of the memo, and the second paragraph, the first sentence.

Q. The memo describes the administrative data on citizenship as "high quality," correct?

A. Correct.

Q. Dr. Abowd, there's no reason to think, for the group of people that you can't match to administrative records, that on average the survey responses under alternative D would be more accurate than the modeling that you would conduct under alternative C, right?

A. That's correct.

Q. And in fact, Dr. Abowd, for this group of people falling in the gaps of the administrative records, your view is that the modeled responses to citizenship status under alternative C would be more likely to be accurate than the survey self-responses to a citizenship question under alternative D, correct?

A. That's correct.

Q. So, Dr. Abowd, for this group of people who can't be matched to administrative records, the Census Bureau's view is that the modeled responses to citizenship status under alternative C would be more likely to be accurate than the survey self-responses to a citizenship question under alternative D, correct?

A. That's correct.

Q. And as we established earlier, Dr. Abowd, the number of individuals you can't match at all to administrative records, that's going to be higher under alternative D than under alternative C, right?

A. Also correct.

Q. So for people who can't be linked to administrative records, if you're attempting to determine their citizenship status, Dr. Abowd, you would prefer modeling it to a survey self-response, right?

A. A little too compound. Could you ask it —

Q. Sure.

A. — straightforwardly.

Thank you.

Q. If you want to get accurate citizenship information about people who fall in the gaps of the administrative records, Dr. Abowd, your recommendation would be to model their citizenship status rather than to try to collect it through a survey self-response, correct?

A. That's correct.

Q. And Dr. Abowd, if the Department of Justice's goal is to get accurate block-level CVAP data, then for this group of people who fall in the gaps of the administrative records, the best course of action is to use — is to impute their citizenship status rather than use a survey question, correct?

A. Most accurate data would come from modeling their citizenship status, that's correct.

MR. HO: OK. Now let's turn back to Secretary Ross's decision memo, page 5. I want to look at the first paragraph and the last two sentences that start with "finally."

Q. I'd like you to read that to yourself and then, when you're ready, let me know.

A. I'm ready.

Q. In these two sentences in this paragraph, Dr. Abowd, is it your understanding that Secretary Ross is suggesting that including a citizenship question on the 2020 census will enable the Census Bureau to model citizenship status more accurately by determining the accurate ratio of citizen to noncitizen responses?

A. So, once again, the secretary did not discuss this with me so I don't know exactly what nuances

he meant. He appears to believe that we would get more accurate CVAP data if we had access to both the survey responses and the administrative data, yes.

Q. And the assertions in this, these two sentences of this paragraph, Dr. Abowd, the commerce department never discussed this with the chief scientist at the Census Bureau, right?

A. It was not discussed with me, that's right.

Q. Dr. Abowd, the two sentences here, they make technical presumptions that the Census Bureau does not currently endorse, correct?

A. Once again, I'm not privy to the technical assumptions. They appear to say that the secretary believes it would be more accurate if we had access to both the survey responses and the administrative data.

Q. That assertion, as you understand it, Dr. Abowd, makes technical presumptions that the Census Bureau would not currently endorse, correct?

A. That's correct.

Q. And as of March 26, 2018, when Secretary Ross issued this memo, the Census Bureau had not completed any analysis as to whether or not the inclusion of a citizenship question would better — would enable the Census Bureau to more accurately model citizenship status for people falling in the gaps of the administrative records, correct?

A. We hadn't done any of that modeling at that time, that's correct.

MR. HO: I want to ask you about another memo of yours that's in the administrative record, Plaintiffs' Exhibit 24. This is in the administrative record and has been admitted into the trial record.

Q. You recognize this memo, right, Dr. Abowd?

A. Yes, I do.

Q. It's a memo that quantifies, under one set of assumptions, some of the data quality differences between alternatives C and D, right?

A. Yes.

MR. HO: Let's turn to page 3 of the memo and figure 1.

Q. Now, this is a breakdown of the Census Bureau's analysis of data quality under alternative C, right?

A. Yes, it is.

Q. So at the time of this analysis, the bureau posited that under alternative C, you could link 295 million out of the 330 million people whom you expect to enumerate during the 2020 census to administrative records containing citizenship, right?

A. Yes.

Q. That's about 89.4 percent of the population; sound right?

A. That does sound right, yes.

Q. According to this analysis, there's about 35 million people whom you'd expect not to be able to link to administrative records, right?

A. That's correct.

Q. That's about 10.6 percent of the population that would fall into that gap of the administrative records that we've been discussing, right?

A. That's correct.

Q. So under alternative C you would model citizenship status for this about 10 percent of the population, right?

A. That's correct.

MR. HO: Let's turn to the next page, page 4 of the memo, figure 2.

Q. Now, this is a breakdown of data quality under alternative D, correct?

A. Yes, it is.

Q. Little more complicated than alternative C, right?

A. It has more boxes, yes.

MR. HO: All right. Let's walk through this.

Q. On the right side of this chart, the bureau posited that there would be 35.4 million people for whom you would not get a response to the citizenship question on the 2020 census, right?

A. Yes.

Q. And if we look at the far left-hand side of the chart, the bureau posits that there are 263 million people who you would get a response to the

citizenship question and whom you could link to administrative records, and the administrative record and the citizenship response would be the same, right?

A. You're on the far left, right?

Q. Yes.

A. 263 million?

Q. Yes.

A. Yes, that's right.

Q. So if we add these two groups together, 263 million, where the question response and the administrative records are the same, and 35.4 million people for whom you don't get an answer to the citizenship question at all, that group together, collectively, putting a citizenship question on the census doesn't give us any better information than if we had no citizenship question on the census, right?

A. Yes, that's right.

Q. OK. So if we add them together, that's 298.4 million people for whom the citizenship question doesn't give us better information about their citizenship status?

A. That's correct.

Q. That's 90.4 percent of the population, right?

A. You've been doing well on the ratios, so I assume you did that one right too. Thank you.

Q. OK. Now let's talk about the rest of the population. You have, in the middle branch of this chart, 22.2 million people, under alternative D,

who you'd expect to give a response to the citizenship question and who couldn't be linked to an administrative record on citizenship, right?

A. That's correct.

Q. And you also have, on the far right-hand side here, 13.8 million people who have no response to a citizenship question and no administrative record on citizenship, right?

A. That's correct.

Q. So you add those two numbers together, that's 36 million people, under alternative D, who can't be linked to administrative records on citizenship, right?

A. Yes.

Q. Now, that's more people who can't be linked to administrative records than you had under alternative C, right?

A. That is correct.

Q. That's because of the reduction in data quality because of more NRFU under alternative D, right?

A. That's correct.

Q. And that's one of the manifestations in which alternative D produces worse data than alternative C, right?

A. Yes, that's right.

Q. OK. Let's look again at the chart and the sort of middle subbranch of the left branch of the chart, the 9.5 million.

Under alternative D, the Census Bureau posited you'd have 9-1/2 million people for whom the

survey self-response on citizenship and the administrative record disagree, right?

A. That's right.

Q. And you don't have any plan for what you would do with those people right now, right?

A. That we'd have to study, yes.

Q. And the traditional Census Bureau practice is that if you have a survey response that conflicts with an administrative record, you generally rely on the survey response, right?

A. So, I hope that I didn't say so unambiguously in any of the depositions that there was a general practice here. I thought I said that this was a pretty unusual situation and that's why we are going to study it further. We don't generally put ourselves in the situation where we have a disagreement and — we try to address the disagreements in the design of the data product.

Q. Dr. Abowd, I want to bring you back to your October 5 deposition, your third deposition in this case.

A. OK.

Q. And specifically page 416, line 15:

"Q. Now, the traditional Census Bureau practice, in general, is that if you have a survey response that conflicted with an administrative record, you generally rely on the survey response, correct?

"A. Correct."

Was that my question for you and your answer that day?

A. Yes, it was.

MR. HO: OK. Can we come back to the chart from the memo, figure 2.

Q. Dr. Abowd, for that group of people, the 9-1/2 million people for whom the survey response and the administrative record conflict, if you use what you described in your 30(b)(6) deposition as the traditional Census Bureau practice of relying on the survey response instead of the administrative record, you agree that that would probably be more accurate — more inaccurate, excuse me, than relying on the administrative record, correct?

A. Yes, I do.

BY MR. HO:

Q. But if you relied on the administrative record instead of a survey response, there would have been no reason to ask a survey question in the first place, right?

A. That's correct.

Q. Now, to be clear, this problem doesn't exist under the alternative C, right?

A. Also correct.

Q. Lets come back to this chart.

Now I asked you a while ago about the 22.2 million people who fall in that gap, can't be linked to administrative records, but from whom you anticipate getting a response to the citizenship question.

That's an accurate characterization of the 22.2, right?

A. Not linked?

Yes, that's correct.

Q. That is about 6.7 percent of the population that can't be linked to administrative records, but under alternative D, you have a survey response, right?

A. That's correct.

Q. Now, under alternative C, you would expect to be able to link some of these people to administrative records, right, Dr. Abowd?

A. Yes, that's correct.

Q. But leave that aside.

For this group of 22.2 million people under alternative D, if you follow traditional Census Bureau practices, you would use the survey response rather than modeling their citizenship status, right?

A. That's correct.

Q. And in your opinion, that would be less accurate than if you just went with modeling their citizenship status, right?

A. That's correct.

Q. Dr. Abowd, if someone argued that alternative D was justified because alternative C requires modeling citizenship status for people who can't be linked to administrative records, you would disagree with that conclusion, right?

A. I would like you to ask it again. If you could just read it back, if you want. I want to make sure I heard the qualifying statements exactly.

Q. Dr. Abowd, if someone argued to you that alternative C is — excuse me — I'll try that again.

Dr. Abowd, if someone argued to you that alternative D is justified because under alternative C, you would have to model the citizenship status for this pool of people who can't be linked to administrative records, you would disagree with that conclusion, right?

A. Yes, I would.

Q. And the Census Bureau would disagree with that argument, right?

A. Yes.

Q. Now, this chart, Dr. Abowd, there is a version of this — excuse me — there are multiple versions of this in the Brown memo, right?

A. That's correct.

Q. I just want to identify them so that the court is aware of where they are.

If we can turn back to Plaintiffs' Exhibit 162, and page 50 of the paper.

Starting on page 50 through pages 53, you go through four possible scenarios for data quality under alternative D, is that right?

And can we scroll through those, please.

A. Yes, that's correct.

Q. These scenarios all are constructed under different assumptions, right, Dr. Abowd?

A. Yes, that's correct.

Q. And after conducting all of these scenarios, the conclusion of the Census Bureau remains that alternative D produces worse data quality than alternative C, correct?

A. That's correct.

THE COURT: Did you explain what AD REC means?

Did I miss that?

THE WITNESS: I did not, your Honor. It is a shorthand for administrative record, ad. rec.

PAGES 989 TO 991

Q. The Census Bureau is bound by OMB standards and guidelines, correct?

A. The office of the chief statistician is charged with supervising the activities of the statistical agencies of the United States Government, yes.

Q. I want to turn to page 16 of the document, of the PDF which is page 11 of the document for the record.

Standard 2.3 reads: Agencies must design and administer their data collection instruments and methods in a manner that achieves the best balance between maximizing data quality and controlling measurement error while minimizing respondent burden and cost.

I read that correctly, right?

A. Yes, you did.

Q. And the Census Bureau is bound by standard 2.3, correct?

A. The Census Bureau is required by the Office of Management and Budget to justify its actions in light of standard 2.3.

Q. Dr. Abowd, within the meaning of standard 2.3, the Secretary's chosen option, alternative D,

results in lower data quality than the Census Bureau's recommendation of

alternative C, correct?

A. That's correct.

Q. Dr. Abowd, within the meaning of standard 2.3, the Secretary's chosen option of alternative D also has a higher respondent burden than the Census Bureau's recommendation of alternative C, correct?

A. That's correct.

Q. Dr. Abowd, within the meaning of standard 2.3, the Secretary's chosen option of alternative D has a higher cost than the Census Bureau's recommendation alternative C, correct?

A. That's correct.

Q. Guideline 2.3.1 reads: Design the data collection instrument in a manner that minimizes respondent burden, while maximizing data quality.

Did I read that right?

A. Yes, you did.

Q. Dr. Abowd, choosing alternative D over alternative C does not comport with guideline 2.3.1, correct?

A. So the Census Bureau's obligation is not to determine how OMB will interpret guideline 2.3.1 in terms of our actions.

I think I already said alternative D deliveries higher quality data at lower cost.

Q. And alternative C —

A. I'm sorry. I misspoke.

Q. Alternative C deliveries high quality data at lower cost?

A. That's what I meant to say. Sorry.

Q. It does so with lower respondent burden, correct?

A. Yes, it does.

Q. All of that and choosing alternative C would be consistent with guideline 2.3.1, correct?

A. Yes, it would.

Q. In the meetings that you had with Commerce Department officials, you heard Commerce Department officials opine that alternative D would be better than alternative C, right?

A. So in none of the meetings — first of all, I only met with the Secretary once on this subject. I believe with the Under Secretary only once.

And I believe in those meetings, some staff members may have opined there are reasons why they thought that certain alternatives would be better. But, frankly, I don't remember any such conversations. I remember being asked a lot of questions and being asked questions that suggested that one or another of the persons in the room thought one way of doing it might be better than the other.

I'm sure I said this in my fact deposition. There was a very open discussion with both the Under Secretary and the Secretary in the only time I was in a meeting with them on this subject. Subsequently, Dr. Lamas had additional discussions with them, I think primarily Dr.

Jarmin, and I won't characterize those because I wasn't in those meetings.

Q. Dr. Abowd, you remember a meeting where a member of Secretary Ross' staff, Earl Comstock, expressed the opinion that alternative D would be superior to alternative C because it would enable you to fill the gaps in the administrative record?

PAGES 994 TO 1002

Dr. Abowd?

A. That's correct.

Q. And the Census Bureau does not agree with Mr. Comstock's opinion, right, Dr. Abowd?

A. That is correct.

Q. The Census Bureau communicated its disagreement with that opinion to Mr. Comstock, right?

A. Yes, that is correct.

Q. And if Mr. Comstock testified in a deposition, Dr. Abowd, that the Census Bureau never communicated its disagreement with that opinion, Mr. Comstock would be wrong, right, Dr. Abowd?

A. I believe that's the case, yes.

Q. Secretary Ross didn't choose alternative C, he chose alternative D anyway, right, Dr. Abowd?

A. That's correct.

Q. Now, I just want to back up and ask you a few questions about how this process unfolded.

Dr. Abowd, you would agree that normally, the process of testing content on the census, is a

decade-long process involving multiple tests and various randomized control tests, correct?

A. Yes.

Q. Lets bring up Plaintiffs' Exhibit 271. This has been admitted into the trial record. This is 2020 census program memorandum series 2016.05, dated April 29, 2016, from Lisa Blumerman.

A. Blumerman.

Q. Blumerman. Thank you, Dr. Abowd.

The subject of this memo is: Plan development and submission of subjects planned for the 2020 census program and questions planned for the 2020 census program.

Right, Dr. Abowd?

A. Yes.

Q. I'm going to refer to this document as the Blumerman memo. OK?

A. Yes.

Q. Now, as of the date that she signed this memo, Lisa Blumerman was an associate director for the 2020 census, correct?

A. That's correct.

Q. Lets turn to page three. I want to look at the section under the header Federal Agency Input.

The first paragraph, the last sentence reads: Federal agencies with known uses of the 2020 census or ACS content, and sector agencies, will receive a letter with instructions for how federal data users may provide updates to the

documentation of data uses. Responses should be received before July 1, 2016. Census Bureau staff may follow up with federal users directly if more clarification is required.

Dr. Abowd, do these sentence conform to your understanding of how the content review was conducted and presented to members of the 2020 census executive steering committee?

A. Yes.

Q. The Department of Justice's request to add a citizenship question was not received by July 1, 2016, correct?

A. That's correct.

Q. To the best of your knowledge, the Department of Justice did not previously write to the Census Bureau about adding a citizenship question prior to December 2017, right?

A. That's correct.

Q. And prior to December 2017, in fact, the Census Bureau had never heard from the Department of Justice that existing CVAP data produced by the Census Bureau was not ideal for purposes of DOJ's VRA enforcement work, correct?

A. I'll answer your question, but I want to just see if you misspoke.

Did you mean prior to July 1, 2016? You said '17.

Q. I said December 2017. I think I meant December 2017.

Before the request, the Gary letter came into the Census Bureau, the Department of Justice had

never communicated to the Census Bureau that ACS CVAP data was not ideal for DOJ's VRA enforcement purposes, right, Dr. Abowd?

A. That's correct.

Q. Lets go back to the Blumerman memo, and I want to look at page four of the memo.

There is a header that reads Content Determination, and the second paragraph, last sentence reads: Final proposed questions are based on the results of extensive cognitive testing, field testing, other ongoing research, and input from advisory committees.

That is your understanding of what the process for the 2020 census was presented to the Census Bureau's 2020 executive steering committee, right?

A. The memo simultaneously describes ACS and 2020 census, but I believe that sentence was intended to apply to both, yes.

Q. Now, your understanding is that the 2010 full census questionnaire was subjective to cognitive testing, right, Dr. Abowd?

A. Yes.

Q. There has been no cognitive testing, however, of the full 2020 census questionnaire, including a citizenship question, correct?

A. That's correct.

Q. Now, lets talk about the second component here, the next component after cognitive testing, field testing.

To the best of your knowledge, Dr. Abowd, the full 2010 decennial census questionnaire was field tested, correct?

A. That's correct.

Q. The full 2020 census questionnaire, including a citizenship question, has not been field tested, correct?

A. That's correct.

Q. Now, there were, I believe, some recent trials that have been described as the end-to-end test this year, Dr. Abowd?

A. So the 2018 end-to-end census test was conducted this year, yes.

Q. And that is sort of like the last dress rehearsal for the 2020 census, right?

A. It's the last large scale test of the 2020 census, correct.

Q. The end-to-end test did not include a citizenship question, correct?

A. That is correct.

Q. And as of the date of your last deposition in this case, October 12, 2018, there were still no plans for field testing of the full 2020 census questionnaire, including a citizenship question, correct?

A. I don't know that you asked me the question in that form at my October 12 deposition.

Q. I wasn't there, so I certainly couldn't have, but let me put a different question to you, Dr. Abowd.

At the time that Secretary Ross made his decision to include a citizenship question on the census, there were no plans for field testing of the census questionnaire, including a citizenship question, correct?

A. That's correct.

Q. Now, Dr. Abowd, after the 1990 census, the Census Bureau investigated the possibility of adding a question concerning respondents' Social Security numbers on the census short form, correct?

A. Yes.

Q. And the Census Bureau conducted an RCT comparing a version of the short form with and without a question asking for a Social Security number, correct?

A. That's correct.

Q. And the RCT assessed the impact on self-response rates of a Social Security number question, correct?

A. That's correct.

Q. And in the RCT, the self-response rate fell off in the group that had the Social Security number question by 3.4 percent, correct?

A. That's correct.

Q. And the conclusion that was drawn from that RCT was that asking for a Social Security number would be sensitive, right?

A. Yes.

Q. And today, the Census Bureau does not request for Social Security numbers on the census questionnaire, right?

A. We never have.

Q. And one of the reasons for that is a concern about the effect of that question on self-response rates, correct?

A. I believe that's correct, yes.

Q. And it is your opinion, Dr. Abowd, that for some sub populations, asking about citizenship might be just as sensitive as asking a question about Social Security numbers, right?

A. Yes.

Q. In fact, it is your opinion that for some sub populations, asking a question about citizenship would be more sensitive than asking a question about Social Security numbers, correct?

A. I think I said could, but yes.

Q. The RCT to assess the effect of a Social Security number on self-response rates to the census was conducted before any decision was made about whether to include a Social Security number question on the census, right?

A. Yes.

Q. And no similar RCT has taken place here along those lines before a decision was made to include a citizenship question, correct?

A. Yes.

Q. Lets bring up Plaintiffs' Exhibit 268.

THE COURT: Actually, lets take our break here instead of doing that. It is 3:22. We'll start again at 3:32.

Because we're still in the direct examination, Dr. Abowd, you should not communicate about the substance of your testimony with defense counsel.

I'll see you in ten minutes. Thanks.

(Recess)

THE COURT: All right. Dr. Abowd, you're still under oath.

Mr. Ho, you may continue.

MR. HO: Thank you, your Honor.

BY MR. HO:

Q. Dr. Abowd, I want to ask you about Plaintiffs' Exhibit 268, which has been admitted into evidence.

Dr. Abowd, this is a proposed content test on a citizenship question dated May 3, 2018, correct?

A. Yes.

Q. This is a proposal for an RCT for a citizenship question on the census, correct?

A. It is an RCT for the content of alternative versions of the citizenship question on the — using the ACS, yes.

Q. This RCT proposal was created by Census Bureau staff, correct?

A. Yes.

Q. And it was made in May of 2018?

A. That's correct.

Q. And the proposal was to initiate an RCT in either November of 2018 or February of 2019, correct?

A. That's correct.

Q. The RCT, as proposed here, would have taken six weeks to collect the data, correct?

A. Yes.

Q. Either if it had been in November of 2018 or February of 2019, either way the RCT could have been completed before census forms are due to be printed, correct?

A. Yes.

Q. And the cost of this proposal ranges depending upon the options you chose between $2 million for one option to $4.1 million for another option, correct?

A. Yes.

Q. The Census Bureau has that money, right, Dr. Abowd?

A. Yes.

Q. This proposal was rejected by a group of decision-makers, including Under Secretary Karen Dunn Kelley, correct?

A. As I testified in my 30(b)(6), the decision not to conduct this RCT was made by — excuse me — Dr. Enrique Lamas' consultation with the Under Secretary, yes.

Q. I would like to bring up Plaintiffs' Exhibit 271, the Blumerman memo.

THE COURT: Who was the second person, Dr. Jarmin?

THE WITNESS: Deputy, Acting Deputy Director Enrique Lamas. Dr. Lamas.

THE COURT: Thank you.

BY MR. HO:

Q. Back to page four of the Blumerman memo.

The page entitled Content Determination, and that last sentence in the second paragraph.

PAGES 1005 TO 1014

Q. And some of those questions concerned testing, right?

A. Yes, they do.

Q. OK. Lets bring up Plaintiffs' Exhibit 140.

These are draft responses to those 35 questions from the Commerce Department, right?

A. Draft responses from the Census Bureau to the Commerce Department, yes.

Q. Thank you for that correction.

Just for the record, this document has been admitted into the trial record, and it is part of the supplemental administrative record in this case.

Dr. Abowd, it is your belief that Acting Director Jarmin intended for you to take responsibility for making sure that the answers to these questions were accurate, correct?

A. For the vast majority of them, yes. He asked me to track that the person assigned to deliver an answer had done so, to vet that answer, to communicate that answer to Burton Reist, the

chief of the decennial communications office, and then Burton Reist was charged with delivering those answers to the Commerce Department on a flow basis. They did go back and forth before we determined that we adequately answered each of the questions.

Q. It is your understanding that Acting Director Jarmin intended you to be ultimately responsible for making sure that the answers to these questions were accurate, correct?

A. Yes.

Q. Lets turn to page six in these draft responses, which is administrative record page 10900.

I want to ask you about question 31. Question 31 asks: What was the process that was used in the past to get questions added to the decennial census, or do we have something similar where a precedent was established.

Did I read that right?

A. Yes.

Q. The draft response reads: The Census Bureau follows a well-established process when adding or changing content on the census or ACS to ensure the data fulfill legal and regulatory requirements established by congress. Adding a question or making a change to the decennial census or the ACS involves extensive testing, review, and evaluation. This process ensures the change is necessary and will produce quality, useful information for the nation.

Did I read that right?

A. Yes, you did.

Q. OK. The text here in this draft response, this was sent from the Census Bureau to the Commerce Department, correct?

A. As I said before, several versions were sent, but I believe this is one of them, yes.

Q. This is one of the versions of the draft response to question 31 that the Census Bureau sent to the Commerce Department?

A. Yes.

Q. And this states that, in this draft response, that adding a question to the decennial census or ACS involves extensive testing, review, and evaluation, correct?

A. Yes.

Q. And as of March 1, 2018, that was your understanding, that adding a new question to the decennial census involves extensive testing, review, and evaluation, correct?

A. Correct.

Q. I want to show you a different version of this document.

I'm sorry. Before we move on, could we bring that back up just for a second. On the next page, I just want to look at the bullets here.

I'm sorry. Can we get the text just above the bullets too.

This is part of the draft response to question 31, right, Dr. Abowd?

A. Yes.

Q. It reads: The Census Bureau and the Office of Management and Budget (OMB) have laid out a formal process for making content changes.

Then there is a series of six bullets after that, right?

A. Correct.

Q. And is it an accurate summary to say that this formal process, as described in these draft responses, includes federal agencies evaluating their data needs, a proposal that demonstrates a clear statutory regulatory need for the data, final proposed questions resulting from extensive cognitive and field testing, several opportunities for public comment, a decision made in consultation with OMB, and then finally, if approved, the Census Bureau implementing the change, is that right?

A. Yes.

Q. OK. Now, I want to show you Plaintiffs' Exhibit 23.

Dr. Abowd, this has been admitted into evidence, and it is in the initial administrative record in this case as the final version of responses to the 35 questions.

Does that comport with your recollection?

A. May I see all the pages of the document, please?

Q. Sure. Maybe we could scroll through.

Does that look right to you, Dr. Abowd?

A. Yes.

Q. Just to be clear, this version of the document was produced in the initial administrative record in this case, but the draft responses that we were talking about earlier, those were not in the initial administrative record in this case, is that your recollection?

A. It's my recollection that this is the version that was in the first 1300 or so pages of administrative record that were these, yes.

Q. Lets look at page 11 and the response to question 31 that is in the final version of these responses in the administrative record.

Question 31 about the process used in the past for adding questions to the decennial census, the final version of this response reads: Because no new questions have been added to the decennial census (for nearly 20 years), the Census Bureau did not feel bound by past precedent when considering the Department of Justice's request. Rather, the Census Bureau is working with all relevant stakeholders to ensure that legal and regulatory requirements are filled and that questions will produce quality, useful information for the nation. As you are aware, that process is ongoing at your direction.

Did I read that correctly?

A. Yes, you did.

Q. OK. So the final version of these responses, as found in the initial administrative record in this case, makes no reference to a well-established process for adding content to the census, right?

A. That's correct.

Q. Instead, the final version in the administrative record says that the Census Bureau did not feel bound by past precedent, right?

A. That's what it says.

Q. And this final version here in the initial administrative record in this case, it makes no reference to extensive testing, review, and evaluation, correct?

A. That's correct.

Q. It also makes no reference to ensuring that a change to the census is necessary, right?

A. It makes reference to consulting with stakeholders, but it doesn't explicitly say the things that the original answer said.

Q. It doesn't use the word necessary to ensure that a change is necessary to the 2020 census, right, Dr. Abowd?

A. That's correct.

Q. Dr. Abowd, you didn't write this final version of the response to question 31 that appear in the administrative record, right?

A. That's correct.

Q. You're not sure who wrote it, right?

A. That's also correct.

Q. You don't know if someone at the census — I mean, you're not aware of someone at the Census Bureau having written this, Dr. Abowd?

A. I had the control copy, and it is not in the last version of the control copy in the folders that were searched for the production of the administrative record.

Q. So this version, Dr. Abowd, that says that the Census Bureau did not feel bound by past precedent, that phrase is not in the last version of this document in the possession of the Census Bureau, correct?

A. As far as I know, correct.

Q. This final version, Dr. Abowd, which makes representations about what the Census Bureau felt bound by, was not written by someone at the Census Bureau, right, Dr. Abowd?

A. Not to the best — not to the best of my knowledge.

Q. Are you aware, Dr. Abowd, that this was written by someone at the Commerce Department?

A. I don't know who wrote this.

THE COURT: Do you know if any of the other questions changed between the final copy that you had on your computer and this copy?

THE WITNESS: I do not believe any other answers are changed.

BY MR. HO:

Q. Dr. Abowd, just to close the loop on something you mentioned earlier. You made a reference to a control copy.

What did you mean by that?

A. I meant that because I was keeping track of who had been assigned to answer the questions, and then when I got an answer back from that person getting that answer vetted, and then copying it into the control copy — master copy, I think, is a synonym — that I understood to be the final versions of each of those answers.

Q. So you maintain possession of the master version of responses to these questions, right?

A. We had some custody issues. Burton Reist also had a version that he exchanged without passing through the control copy, but we did synchronize them.

Q. OK. And as far as you know, the final version of the answer to question 31, a question that was posed by the Commerce Department to the Census Bureau and which makes representations about what the Census Bureau felt bound by, was not written by someone at the Census Bureau, correct?

MR. EHRLICH: Objection.

THE COURT: Sustained.

Can you tell me what you did with the control copy as you've described it?

In other words, where did it go between the time that you considered it to be final and the creation of this document; do you know?

THE WITNESS: So, I do, your Honor. I know that Deputy Director, Acting Deputy Director Lamas asked Burton Reist, who is the chief of the decennial communications office, to communicate the answers back to Commerce on a flow basis.

So I was keeping a master copy, but Burton was sending answers by e-mail as we made them and as they were vetted up to Commerce. Several incomplete copies of the document were exchanged back and forth, and eventually inside the Census Bureau, around March — 1, there is a date on the control copy, I think it is March 1 — we agreed that these were the final answers.

That is the copy that I have sitting in my — well, there was an area of secured disk that we were using to store the documents related to the citizenship question that is still there.

THE COURT: What, if anything, did you do with it after March 1, when, as far as you were concerned, it was the final version?

THE WITNESS: I believe I was copied on an e-mail where it was communicated back, then I just moved on.

THE COURT: Communicated back meaning sent?

THE WITNESS: Sent to Commerce.

THE COURT: By Commerce, you mean who at Commerce would have received it?

THE WITNESS: So these e-mail threads tended to grow organically. Burton Reist would initiate them, and then there would be a back-and-forth exchange, and then someone like Dr. Lamas would ask to put a consolidated set together and send them up and say these are — he would have called it the latest version. There was a lot of back and forth because they asked for a lot of clarifications as we were developing the answers. And, in fact, the final version has a spreadsheet addendum that I haven't been shown, but I think is the next thing in the administrative record.

So around March 1, after we had all agreed that these were the answers, and as we understood it, Commerce had agreed that we had answered their questions, I marked the March 1 copy that was sent, whatever date it was sent, I believe it was March 1, I marked that copy in the secured folder the final one.

THE COURT: All right. But do you, sitting here today, do you know who that copy was sent to at Commerce?

THE WITNESS: I believe it is in the administrative record, the e-mail that conveyed it, but I don't remember. I believe at least the Under Secretary would have been on the list.

THE COURT: The Under Secretary being Kelley?

THE WITNESS: Dunn Kelley.

THE COURT: Thank you.

BY MR. HO:

Q. The text written in this final version of the response to question 31 posed by the Commerce Department to the Census Bureau, Dr. Abowd, this is not the text in the final version that the Census Bureau transmitted to the Commerce Department, correct?

A. That's correct.

Q. Lets go back to Plaintiffs' Exhibit 26, Secretary Ross' decision memo.

PAGES 1023 TO 1033

BY MR. HO:

Q. Dr. Abowd, the 2020 census questionnaire will be finalized by June of 2019, correct?

A. That's when the final artwork is due at the printers, yes.

Q. With existing resources the Census Bureau can lock down the content of the census questionnaire by June 30, 2019, correct?

A. That's correct.

Q. Under the current budget, if there are changes to the paper questionnaire after June of 2019, that would impair the Census Bureau's ability to timely administer the 2020 census, correct?

A. That is correct.

Q. With exceptional resources, the final date for locking down the content of the census questionnaire is October 31, 2019, correct?

A. That is correct.

Q. Changes after October 31, 2019, would require major redesigns and might require congressional authorization, in your understanding, right, Dr. Abowd?

A. That is correct.

MR. HO: I want to return again to the Ross decision memo, Dr. Abowd, Plaintiffs' Exhibit 26. I want to look at the final page, page 8, the top paragraph, here.

Q. The secretary concluded that a citizenship question on the decennial census was necessary to provide a complete and accurate response to the DOJ request, correct?

A. Yes.

Q. I want to ask you about that and I want to — before getting too deep into that determination, I want to ask you about the kinds of data that DOJ currently has available. The Census Bureau produces various data files for redistricting purposes, right, Dr. Abowd?

A. Yes.

Q. And one of those redistricting data products from the Census Bureau is called the PL 94-171 data file, correct?

A. Yes.

Q. The PL 94-171 data file has information in it concerning total population at various levels of census geography, correct?

A. Yes, it does.

Q. And it has voting-age population at various levels of census geography, correct?

A. Yes.

Q. And it has voting-age population broken down by race and ethnicity at the census block level in it, correct?

A. Yes.

Q. But it does not have citizen voting-age population in it broken down by race and ethnicity at the individual block level, correct?

A. That's correct.

Q. The data in the PL 94-171 data file, that's based on responses to the decennial enumeration, correct?

A. Yes.

Q. And the Department of Justice uses that data file, right?

A. That's my understanding, yes.

Q. Also available to the public?

A. Yes, it is.

Q. The PL 94-171 data file, that's never had citizen voting-age population by race and ethnicity down to the block level, correct?

A. The PL 94-171 data have never included citizenship, that's correct.

Q. Never included citizenship data in it at any level of geography, correct?

A. To the best of my knowledge, yes.

Q. So, for citizen voting-age population, the Department of Justice, when it's doing its redistricting-related work, uses a separate tabulation of data from the Census Bureau, correct?

A. That's correct.

Q. And that's what we could call the CVAP tabulation?

A. Yes, sir.

Q. That's publicly available not just for the Department of Justice, right?

A. All such tabulations are publicly available, yes.

Q. Now, before the ACS — I'm sorry.

And the CVAP tabulation, that's based on responses to the American Community Survey, correct?

A. That's correct.

Q. Now, before the American Community Survey, the Census Bureau produced CVAP data based on responses to the census long form, right?

A. Yes.

Q. Census long form was not distributed to the entire population, correct?

A. That's correct.

Q. So data derived from the long form, those were statistical estimates based on a sample survey, right?

A. Yes.

Q. That's also true of the ACS; that citizenship data derived from the ACS is also a statistical estimate based on a statistical sample, correct?

A. Yes.

Q. So both the long-form CVAP data used in the past and the ACS CVAP data used at present, both statistical estimates based on survey samples, correct?

A. Yes.

Q. And they both had margins of error, correct?

A. Sampling error, yes.

Q. Now, the total population data in the PL 94-171 data file, that's not sample-based, right?

A. That's correct.

Q. But that data still does have some margins of error associated with it, right?

A. It has a nonsampling error, is what we call it, yes.

Q. The citizenship question, the proposal to add a citizenship question to the 2020 census is sometimes referred to as "reinstating a citizenship question." Have you heard that phrase, Dr. Abowd?

A. I believe that's the phrase the secretary used, yes.

Q. OK. And just to be clear, the 2000 census form sent to every household in America, that didn't have a citizenship question on it, right?

A. That's correct.

Q. And the citizenship data that DOJ currently uses based on statistical — based on survey sample, that's not different from long-form citizenship data that the Department of Justice used to rely on in the sense that both are statistical samples with margins of error, right?

A. Both are samples with sampling error. Their designs are very different, so I don't — I'm not saying yes to them being identical. They're both sample-based. The design of the American Community Survey is very different from the design of the old long-form sample.

Q. But it's not the case that one's a hard count and the other is not; they were both statistical samples with margins of error, right?

A. That's correct.

Q. That's never changed, as far as you know; the Department of Justice, when it's needed CVAP data, it's always needed — it's always relied on statistical samples with margins of error, right?

A. To the best of my knowledge, yes.

Q. Now, the ACS data are produced in both one-year and five-year bases, correct?

A. Tabulations of at least, yes, one-year and five-year summaries. Yes.

Q. One-year ACS estimates are produced from data collected in a single calendar year, right?

A. Yes.

Q. And five-year ACS estimates are produced based on data collected over a consecutive five-year period, correct?

A. That's correct.

Q. You'd agree that five-year ACS estimates have larger sample sizes than one-year ACS estimates, right?

A. For the same geographic area, yes.

Q. And five-year ACS estimates in comparison to one-year ACS estimates for the same geographic area would have smaller margins of error, correct?

A. Yes.

Q. And that would mean they're more precise than one-year ACS estimates, right?

A. As long as timeliness is not a salient feature, yes.

Q. The tabulation of CVAP data produced from the ACS is based on five-year ACS estimates, not one-year ACS estimates, correct?

A. Correct.

Q. And the reason for that is that one-year ACS estimates are deemed sufficiently reliable only for areas that have a population of more than 65,000 people, correct?

A. There are a few additional criteria, but that's basically correct.

Q. By contrast, five-year ACS estimates are published by the Census Bureau as being reliable for smaller — geographic areas with smaller populations, correct?

A. That's correct.

Q. As of today, it still hasn't been decided whether the PL 94-171 file with total population data will also include the block-level CVAP data that the Census Bureau expects to assemble after the 2020 census, correct?

A. That's correct.

Q. So even if a citizenship question is included on the census questionnaire, as of now, we don't know whether or not there's going to be a single data set that has both total population and block-level CVAP data broken down by race or ethnicity, correct?

A. We don't know there will be a single data set, but we did commit to delivering block-level CVAP data in a timely fashion consistent with the delivery date for the PL 94.

Q. The Census Bureau hasn't made a decision yet about how it will process responses to the citizenship question alongside the administrative citizenship data that you have, correct?

A. That's correct.

Q. Dr. Abowd, even if a citizenship question remains on the 2020 census questionnaire, the Census Bureau hasn't determined whether the block-level CVAP data that it produces will, in fact,

be based primarily on responses to the citizenship question, correct?

A. That is correct.

Q. Dr. Abowd, let's assume now that the citizenship question stays on the 2020 census questionnaire and let's talk about how, to the extent you know right now, that would play out in practice in terms of producing a block-by-block-level-CVAP data. Responses to the census questionnaire are prohibited from disclosure under Title 13, correct?

A. Publications identifying a business or individual or household specifically and providing identifiable data on that entity are prohibited.

Q. And that prohibition on disclosure also applies, as far as you know, on prohibiting the disclosure of that information to the Department of Justice, correct?

A. That's correct.

Q. Now, census blocks vary significantly in terms of the size of their populations, correct?

A. Yes, they do.

Q. Some census blocks have fewer than ten people on them, right?

A. Yes.

Q. Some census blocks have one person on them, right?

A. That's correct.

MR. HO: I want to bring up Plaintiffs' Exhibit 513, which we're using purely for demonstrative

purposes. This is a map of the Fort Myers area, census blocks in Fort Myers, and if we could blow up kind of the middle of the map around where it says Lee. This was built using data from the Census Bureau's publicly available website of the total population on various census blocks.

Q. Dr. Abowd, if we look at some of these squares right around Lee, I mean, all of the census blocks right around where Lee is written have fewer than ten people on them, right?

A. Yes.

Q. And several of them have only one person on them, right?

A. Yes.

Q. So, Dr. Abowd, you'd agree with me that with respect to a census block that has only one person on it, when the Census Bureau produces block-by-block citizenship data, the Census Bureau was legally prohibited from producing data that would accurately reflect what that one person said in response to a citizenship question on the census, correct?

A. We interpret that provision of Title 13 as prohibiting us from releasing data at the block level that would make it possible to identify the person who supplied those data.

Q. So when you produce block-by-block CVAP data, for a block with one person, you're not going to produce data that reveals that person's response to the citizenship question, right?

A. We'll apply disclosure avoidance before tabulating that block, yes.

Q. So if a person exists in a block with one person on it, right where it says Lee, to the right, diagonally above it, that person says "I'm not a citizen" in response to the citizenship question, and you publish a total number of noncitizens for that block, can you publish one?

A. If they said they're not a citizen?

Q. Yes. Can you publish one for there's one noncitizen on this block?

A. So what we would do is we would add random noise to the tabulation, reconstruct the microdata and then publish the counts from the random noise. The random noise introduces substantial uncertainty about the single person and less and less uncertainty as the number of persons involved increases.

Q. And the reason why you do that, Dr. Abowd, is because if you didn't do it, publishing the CVAP data at the block level would create what you might call re-identification risks for that person, right?

A. Yes.

Q. And just so we're all clear, re-identification is when there's data that's anonymous but a third party can look at it and then manage to discover the individual to which that data belongs, right?

A. That's correct.

Q. And you apply data disclosure-avoidance techniques to prevent that from happening, right?

A. That's correct.

Q. And you don't just do that for census blocks that have a single person on them; you do that for every census block, right?

A. That's right.

Q. So, Dr. Abowd, there won't be a single census block in which the citizenship numbers, as reported by the census after the 2020 census questionnaire, reflect the actual responses reported by the people who live there in their responses to the citizenship question on the 2020 census, correct?

A. Except randomly, correct.

THE COURT: Can I just ask a few questions about how this works.

First of all, by way of background, how is it determined what a census block is? Why do some have zero

PAGES 1039 TO 1048

that we can show them that it's still fit for use.

We did not ever previously do this. Previously we just added the noise and told the users that we weren't going to tell them anything about it.

THE COURT: And maybe this is an unintelligible question, but is there a census block size that is adequate enough that you would not need to introduce noise in order for the relevant data to be masked?

THE WITNESS: No. You have to introduce noise, your Honor, to every block, to every

tabulation, but you control the amount of noise that you introduce so as to guarantee accuracy along the dimensions that the use case requires.

THE COURT: All right.

Mr. Ho.

MR. HO: I may have some questions that might clarify some of this, your Honor.

Q. Dr. Abowd, with respect to what the Census Bureau's done in the past, the publicly available technical documents state that in the past the Census Bureau has applied household-level swapping and synthetic data noise infusion, correct?

A. That's correct.

Q. Let's talk about those two different things, and let's start with household-level swapping.

Household-level swapping would be where you take certain variables on one household's record and you match them up to the variables on another household's record, located in a different geographic area, and then you swap those values except the address so that it looks like essentially one household lives at one location and the other household lives in another location, right?

A. Yes, that's essentially correct.

Q. And when you do that, when you've done that in the past, you would swap the households across census blocks, correct?

A. Yes, sir.

Q. And you do that because there would be no point in swapping households within a census block, right?

A. That's right.

Q. Now, let's talk about synthetic data noise infusion.

That's a different technique, right?

A. That is correct.

Q. And that's what you were talking about with Judge Furman earlier, right?

A. I was talking about a particular form of that, yes.

Q. Right, because there are multiple forms of synthetic data noise infusion, correct?

A. They're multiple forms of noise infusion. They don't all involve synthetic data.

Q. Thank you.

Now, one way of doing noise infusion is to develop a model for when you have a particular item or variable on a household's record that's sensitive and then replacing that variable as reported by the household with synthetic, essentially made-up data based on the model, is that right?

A. With a draw from the model's predictive distribution, that's correct.

Q. And the idea is that at a high level of geography, like a county, the overall aggregate numbers are going to remain essentially the same, right, Dr. Abowd?

A. So, some disclosure-avoidance methods have that property and some don't. Without getting into the deep weeds of ones that you're talking about, the particular synthetic data property that you just described won't have that feature unless it is engineered into the synthesizer.

Q. For the use case that you have here — right — when you're talking about higher levels of geographic units, like counties, when you infuse the synthetic data, the idea is that the aggregate numbers are going to be basically the same? Right?

A. The idea is not with respect to the geographic area but with respect to the population within the geographic area.

Q. Thank you.

A. The denser the population the more accurate the statistics.

Q. OK. So, the larger the population size of the geographic area the more accurate the data will remain even after synthetic data noise infusion, correct?

A. After the disclosure-avoidance procedure we're implementing for the 2020 census, that's correct.

Q. But at the smaller levels of geographic specificity, like the individual census block, the more noise there's going to be — I mean, in terms of the population —

MR. HO: Let me start that question again.

Q. Areas with smaller population sizes — like census blocks typically have smaller population

sizes than counties — there's going to be more noise at that level of geographic specificity once you employ noise infusion, correct?

A. That's correct.

Q. So, leaving all the noise infusion and the CVAP data using responses to the citizenship question, today, when we use ACS CVAP data, generally speaking, we have more accuracy at geographic levels of specificity that have larger populations and more uncertainty at lower levels, correct?

A. That's correct.

Q. And that's also going to be true with CVAP data produced based on responses to the decennial census question due to noise infusion at higher levels of geography with more people, more accuracy but greater uncertainty at smaller levels of geography with smaller populations, correct?

A. It's the smaller populations that make the sentence correct, and yes, it is, with that qualification.

Q. Now, the Census Bureau has not yet set the parameters for disclosure avoidance for the CVAP table that will be created after the 2020 census, correct?

A. That's correct.

Q. If you do data disclosure avoidance properly, then the block-level CVAP data that you produce after the 2020 census including a citizenship question, the block-level data is going to be a

series of estimates for each block rather than an exact tabulation of census responses, correct?

A. I have difficulty answering that question because "estimates" has a specific legal meaning that's not quite the same as the generally understood statistical meaning. The data produced for each block and for the entire country and for every geographic area in between will be based on the entire enumeration, so in that sense not an estimate.

In the sense that they have been infused with noise to protect confidentiality and therefore have margins of error that resemble the margins of error that you would get in statistical processes that become more accurate as the number of cases increases, then it is correct. So they are not estimates in the sense that the law understands sample-based estimates. They're based on the entire population.

Q. Well, let's not talk about the law for a moment. I just want to — and let's not worry about sample-based estimates, or whatever.

Just in your words, Dr. Abowd, you would describe the block-level CVAP data that's produced even after a citizenship question is on the census as an estimate rather than a precise tabulation, correct?

A. Yes.

Q. So the block-level CVAP tabulation produced by the Census Bureau will not reflect the actual values of the number of citizens of voting age in

each of those census blocks after the 2020 census, correct?

A. It will not be exactly equal to that number. It will be approximately equal to that number, with the approximation improving as the population increases.

Q. And after the 2020 decennial census even if there is a citizenship question, when the Census Bureau produces block-level CVAP data, there will be error margins associated with that data, correct?

A. Yes.

Q. And after the 2020 decennial census, when the Census Bureau produces block-level CVAP data, even if there is a citizenship question on the census, as of right now, the Census Bureau doesn't know whether the margins of error associated with that block-level CVAP data will be larger or smaller than the CVAP data that DOJ currently uses, correct?

A. We don't know, but we are able to control the margin of error in different ways, and so we intend to produce those tables in a manner that is fit for use by the Department of Justice.

Q. But you don't know right now whether or not the margins of error associated with block-level CVAP data produced after the 2020 census, assuming that there's a citizenship question on it, that those block-level estimates will have margins of error that are any smaller than the block-level CVAP data that DOJ currently relies on, correct?

A. I'd like to answer your question, Mr. Ho, but the DOJ doesn't currently work with any block-level CVAP data, so —

Q. Well, the DOJ does translate ACS CVAP data at one level of geographic specificity and combines it with decennial census data to produce block-level CVAP estimates, correct?

A. That's not my understanding of how it's done. My understanding of how it's done is that they combine block-level CVAP data with block-level other data, PL 94 data, and they estimate the citizen population in the voting districts that they're trying to supply — to do scrutiny of. Sometimes that involves having to model down to the block level, but it doesn't always.

Q. OK. Dr. Abowd, this is a very simple question. The CVAP data that the Census Bureau's going to produce after the 2020 census, assuming that the 2020 census includes a citizenship question, we don't know today whether or not that data will have margins of error that are any more precise than the CVAP data on which the Department of Justice currently relies, correct?

A. Because the parameters have not been set, the answer to that question has to be yes.

Q. Dr. Abowd, there were never any conversations between the Department of Justice and the Census Bureau about this issue prior to Secretary Ross's issuance of his decision memo ordering the inclusion of the citizenship question on the census, correct?

A. That's correct.

Q. DOJ refused to meet with you to discuss, right?

A. So, I don't know that DOJ would have refused to meet with us to discuss disclosure avoidance on the PL 94 and CVAP table. All I know is that they didn't meet with us to discuss the specific request about adding a citizenship question to the 2020 census.

Q. During that whole process, between when you began your analysis with the SWAT team and when Secretary Ross issued his decision memo, there were never any conversations between commerce and the Census Bureau about how disclosure avoidance might affect the precision of the CVAP data that the Census Bureau could produce after the 2020 census, correct?

A. Not entirely. I had already briefed Undersecretary Kelley on the consequences of modernizing the disclosure-avoidance system at the Census Bureau. I briefed her, I believe, in November of 2017.

Q. That was before you began working on the citizenship question, right, Dr. Abowd?

A. That's correct.

Q. OK. My question was meant to be a little more precise, and I apologize if I didn't word it correctly. But my question is from the time that you started analyzing the citizenship question request from the Department of Justice to when Secretary Ross issued his decision memo, there were no conversations between the Census Bureau and commerce department officials about whether

disclosure avoidance might affect the precision of the block-by-block CVAP data that the Census Bureau could produce based on responses to the citizenship question on the census, correct?

A. Not quite. We did, both in discussing it with the secretary and in discussing it with the undersecretary, remind them both that we would be using disclosure-avoidance procedures at the block level.

Q. And in spite of that reminder, the secretary forged ahead and ordered a citizenship question anyway, right, Dr. Abowd?

A. The secretary was aware of our intention to use disclosure avoidance —

Q. There are no documents in the administrative record that you're aware of, Dr. Abowd, that reflect the way in which disclosure avoidance might affect the precision of block-by-block CVAP data that the Department of Justice was requesting from the Census Bureau through a citizenship question on the census, correct?

A. That's correct.

MR. HO: Let's go back to Secretary Ross's memo, Plaintiffs' Exhibit 26. I want to go to page 8.

Q. Secretary Ross says that he has determined that reinstatement of a citizenship question on the 2020 decennial census is necessary to provide complete and accurate data in response to the DOJ request. Do you see that?

A. Yes, I do.

Q. Dr. Abowd, you don't agree that a citizenship question on the 2020 census is necessary to provide a complete and accurate, to provide complete and accurate data in response to the DOJ request, correct?

A. That's correct.

Q. And Dr. Abowd, the position of the Census Bureau is that a citizenship question on the 2020 decennial census is not necessary to provide complete and accurate data in response to the DOJ request, correct?

A. That's correct.

MR. HO: Dr. Abowd, I don't have any other questions for you right now, but your Honor, the plaintiffs, because we still have a few exhibit issues to sort out, although my questioning of Dr. Abowd is complete, we would not like to close the record just yet.

THE COURT: All right. I also assume you want to

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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18 Civ. 2921 (JMF)

STATES OF NEW YORK, COLORADO, CONNECTICUT, DELAWARE, ILLINOIS, IOWA, MARYLAND, MINNESOTA, NEW JERSEY, NEW MEXICO, NORTH CAROLINA, OREGON, RHODE ISLAND, VERMONT, and WASHINGTON, *et al.*,

Plaintiffs,

—v.—

UNITED STATES DEPARTMENT OF COMMERCE, *et al.*,

Defendants.

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18 Civ. 5025 (JMF)

NEW YORK IMMIGRATION COALITION, *et al.*,

Consolidated Plaintiffs,

—v.—

UNITED STATES DEPARTMENT OF COMMERCE, *et al.*,

Defendants.

Trial

New York, N.Y.
November 14, 2018
9:00 a.m.

Before:

HON. JESSE M. FURMAN,

District Judge

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MR. HO: Look at page 8 of this document, which is page 18 of the PDF, once you get past the table of contents.

Q. And this is subrequirement A2-3.3. Do you see that?

A. Yes, I do.

Q. And under subrequirement A2-3.3, generally speaking, survey questionnaires must be pretested to identify problems and then refined based on pretesting results before being implemented. Correct?

A. I assume you're reading from that. I haven't found the sentence you were reading.

Yes, that's correct.

Q. OK. I believe you discussed the note to this subrequirement with Mr. Ehrlich, the one that reads —

MR. HO: Not that one yet. Let's start with the top note:

"On rare occasions, cost or schedule constraints may make infeasible to perform complete pretesting. In such cases, subject matter and cognitive experts must discuss the need for and feasibility of pretesting. The program manager must document any decisions regarding such pretesting, including the reasons for the decision. If no acceptable options for pretesting can be identified, the program manager must apply for a waiver".

Q. Do you remember discussing that with Mr. Ehrlich?

A. I remember discussing the other note, but — yes, I do

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disagreement rate?

THE WITNESS: The statistic that Mr. Ho quoted at around 30 percent applies to the 2010 American Community Survey. The disagreement rate is higher for the 2016 American Community Survey, closer to 37 percent.

THE COURT: And that's based on the breakoff data?

THE WITNESS: That's based on the linkage, your Honor, to the —

THE COURT: I'm sorry. Keep your voice up.

THE WITNESS: The numbers that we're talking about right now are based on the linkage of the American Community Survey to the administrative record data on citizenship.

THE COURT: Understood.

BY MR. HO:

Q. Given the rate at which noncitizens provide inaccurate responses to the citizenship question on the American Community Survey, Dr. Abowd, the Census Bureau now acknowledges that there's a problem with the ACS citizenship question, correct?

A. That's correct.

Q. There's no consensus view right now within the Census Bureau as to what to do about that problem, right?

A. That's correct.

Q. Given this problem, when the next ACS content review takes place, there's going to be a review of the citizenship question on the ACS and how it's performing on that survey, correct?

PAGES 1287 TO 1288

it is not performing adequately, then I'd accept that conclusion.

I do have to say, though, that among the methodologists at the Census Bureau, many would like to see a further analysis of the — that disagreement in light of additional data about naturalizations and missing updates to our source of citizenship data before concluding that it's in error. And so the disagreement is not in dispute. The fact that it is so large makes it difficult to attribute the bulk of it to an error in updating naturalizations, but we would like to know about how often it is — they disagree because one of our primary citizenship data sources has to be

updated by an affirmative action if citizenship happens, and we don't know the rate at which that happens.

We can tell that it happens in looking at successive copies of the NumIdent, but that's the sort of quantitative research that a content review would normally undertake before deciding to whom the question would be posed or whether the question would be substituted for an alternative source.

THE COURT: All right. Let me ask you, in your opinion, your expert opinion, based on the existing data — that is to say, the absence of a content review that breaks down the disagreement rate in the way that you just described — would you describe the question as performing adequately in light of the existing data?

THE WITNESS: No, I don't think the question performs adequately.

BY MR. HO:

Q. Dr. Abowd, at the time that Sec'y Ross made his decision, he was aware of the fact that noncitizens were likely answering this question on the ACS incorrectly more than 30 percent of the time, correct?

A. Yes, that's correct.

Q. And he knew that because you told him that in your January 2018 memo, correct?

A. Yes, I did.

Q. And Sec'y Ross also mentioned this fact in his decision memo, correct?

A. As I recall, yes.

Q. But Sec'y Ross's view was that a question that noncitizens get wrong 30 percent of the time has been well tested, right?

A. That was also the advice we gave the secretary.

Q. Sec'y Ross made his decision to include the citizenship question without conducting any analysis of whether or not people might answer the question more accurately — less accurately in today's political environment, correct?

A. I'm sorry. Could you repeat that? It was clear. I just lost the first part.

Q. No. It's all right. It's my fault.

The decision to add the citizenship question was made by

PAGES 1303 TO 1305

environment can affect response rates?

A. Yes.

Q. The macro environment can also affect NRFU success, correct?

A. Yes, it can.

Q. And the Census Bureau's CBAMS research suggests that current political environment has negative implications for the likely effect of including a citizenship question on the census, correct?

A. Assuming you read back the conclusion without modification, yes. We've had the slide up. What it says was the conclusion.

Q. And you would agree, then, that the political environment, as reflected in the CBAMS research, also suggests negative implications for the current macro environment on the effectiveness of NRFU if the census questionnaire were to include a citizenship question, correct?

A. Yes, I agree with that.

Q. There's been no testing of the efficacy of NRFU operations with a census questionnaire including a citizenship question, right?

A. That's correct.

Q. And part of NRFU success hinges upon the success of the Census Bureau's integrated communications plan to encourage census participation, right?

A. Yes.

Q. And that includes partnering with trusted community voices, correct?

A. It's technically the partnership and not the communication plan, but yes.

Q. And the partnership, the community voices with whom you partner are expected to carry forward a message that census participation is safe and important, correct?

A. Yes, and to help us develop that message.

Q. OK. The ability of trusted partners to carry forward the message that the census is, that

participation in the census is safe and important has been made more difficult by the inclusion of a citizenship question, correct?

A. Yes.

Q. So, one example of a trusted voice is NALEO, correct?

A. Which?

Q. NALEO.

A. Yes.

Q. OK. NALEO opposes the citizenship question, correct?

A. As far as I understand it, yes.

Q. So the citizenship question on the census, that's going to make NALEO's job harder to be a trusted voice to carry forward the message that census participation is safe and important, correct?

A. Yes.

Q. That's also true for the National Urban League, correct?

A. I'm unaware of their public position on the question, but if it is that the citizenship question should be removed, then yes.

Q. It's also going to make it harder for the National Conference of American Indians, correct?

A. Same qualification, but if so, yes.

Q. It's also going to make it harder for the Leadership Conference on Civil Rights, correct?

A. Same qualification, but yes.

Q. Dr. Abowd, there hasn't been any testing of how well messaging promoting citizenship — promoting census participation will work for a questionnaire including a citizenship question taking account of the current macro environment, correct?

A. So, I'm unable to tell the difference between that question and the half a dozen others I've answered. The answer's yes. If there's a subtle difference between them, I haven't seen it.

Q. Dr. Abowd, there hasn't been any effort to test the effectiveness of NRFU operations to counteract a reduction in response rates due to a citizenship question in the macro environment context of a president who has referred to Mexicans and rapists and murderers, correct?

MR. EHRLICH: Objection.

THE COURT: Overruled.

You may answer.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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18 Civ. 2921 (JMF)

STATES OF NEW YORK, COLORADO, CONNECTICUT, DELAWARE, ILLINOIS, IOWA, MARYLAND, MINNESOTA, NEW JERSEY, NEW MEXICO, NORTH CAROLINA, OREGON, RHODE ISLAND, VERMONT, and WASHINGTON, *et al.*,

Plaintiffs,

—v.—

UNITED STATES DEPARTMENT OF COMMERCE, *et al.*,

Defendants.

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18 Civ. 5025 (JMF)

NEW YORK IMMIGRATION COALITION, *et al.*,

Consolidated Plaintiffs,

—v.—

UNITED STATES DEPARTMENT OF COMMERCE, *et al.*,

Defendants.

Trial

New York, N.Y.
November 15, 2018
9:45 a.m.

Before:

HON. JESSE M. FURMAN,

District Judge

PAGE 1352

model when you have evidence that the missing data aren't ignorable can bias the ignorable missing data model, and the answer is yes.

Q. Dr. Abowd, nonresponse, we have established, is highly correlated with citizenship, correct?

A. The bulk of the evidence suggests that the citizenship question is likely to be responsible for the decline in self-response.

Q. Lets bring up the Brown memo, Plaintiffs' Exhibit 162, page 44. I want to look at the first paragraph, the last two sentences here.

The last two sentences read: The accuracy of this imputation system is unknown at this time. As discussed, the imputation will be challenging due to the fact that nonresponse is highly correlated with citizenship.

I read that correctly, right?

A. Yes, you did.

Q. The Census Bureau agrees with that conclusion, correct?

A. Yes, we do.

Q. So the pool of households that do self-respond to the census, you would expect that pool to be disproportionately comprised of all citizen households, correct?

A. Yeah. I think the math works out that way, yes.

Q. To be clear, you're going to do imputation based on those self-responding, those enumerated households, correct?

PAGE 1357

Q. That's fine. We can come back to this.

A. Thank you.

Q. Why don't we move on, Dr. Abowd.

You agree that it is highly unlikely that the Census Bureau can eliminate the effect of adding a citizenship question through the Integrated Partnership and Communications Program, correct?

A. Eliminate as opposed to mitigate?

Q. Correct.

A. It is highly unlikely it would eliminate it, yes.

Q. You also agree it is highly unlikely that the Census Bureau can eliminate the differential undercount through NRFU, correct?

A. Yes, that's correct.

Q. You also agree that it is highly unlikely that the Census Bureau can adjust NRFU to eliminate the effects of adding the citizenship question on response rates, correct?

A. I'm not sure the context in which you're asking that modify it specifically to address the issues arising from the citizenship question.

Is that the context you're asking me?

Q. Yes.

A. Yes. We don't plan to modify the NRFU operation to address the citizenship question. We plan to modify the communication campaign and to use the NRFU operation as vigilantly as we can.

PAGES 1373 TO 1375

A. I would take by that that there had been discussions in the political stratosphere about it.

Q. What do you mean by political stratosphere?

A. The media, the Congress, the politicoes that occupy inside the Beltway, general political discussion.

I don't know what the secretary meant, but if you're asking about what I understood, that's what I understood; there had been talk about it.

Q. At the time that you had your meeting with Sec'y Ross on February 12, 2018, to talk about the citizenship question, you were not aware of the fact that the citizenship question had been in the air in the early days of the administration, correct?

A. That's correct.

Q. It was not in the air at the Census Bureau, so to speak, correct?

A. Not the air I was breathing.

Q. Dr. Abowd, just a few more questions.

THE COURT: Are you offering that into evidence?

MR. HO: Yes, your Honor. I apologize. Plaintiffs offer Plaintiffs' Exhibit 687 into evidence.

THE COURT: I think it's 688.

MR. HO: 688. Excuse me.

THE COURT: Any objection?

MR. EHRLICH: No objection, your Honor.

THE COURT: Admitted.

(Plaintiffs' Exhibit 688 received in evidence)

BY MR. HO:

Q. Dr. Abowd, during your testimony with Mr. Ehrlich, you didn't change your view that in comparison to the Census Bureau's recommendation of alternative C — that is, relying exclusively on administrative records to develop CVAP data — alternative D, the secretary's chosen option of using a citizenship question in combination with administrative records, will result in worse quality data for the 2020 census overall, correct?

A. I did not change my testimony. That's correct.

Q. And you didn't change your testimony that alternative D, adding a citizenship question, will result in worse quality CVAP data specifically, correct?

A. I did not change my testimony, correct.

Q. And you didn't change your testimony that alternative D, which includes adding the citizenship question, will be more expensive than alternative C, correct?

A. I did not change my testimony, correct.

Q. OK. I just want to make sure the record's clear here. In comparison to alternative C, adding the citizenship question under the secretary's chosen alternative, alternative D, that's worse for the Census Bureau's goal of conducting an accurate 2020 census, right?

MR. EHRLICH: Objection.

THE COURT: Overruled.

A. Correct.

Q. And the secretary's choice is worse for the Department of Justice's goal of having accurate block-level CVAP data, correct?

A. Correct.

Q. But the secretary's choice is better for the goal of creating a climate of fear in immigrant communities, correct?

MR. EHRLICH: Objection.

THE COURT: Sustained.

MR. HO: I don't have any other questions, Dr. Abowd.

THE COURT: All right. Since it's 11:00, why don't we take our morning break there, and then we'll pick up with Ms. Goldstein.

See you in ten minutes. Thanks.

(Recess)

THE COURT: You may be seated.

Dr. Abowd, you're still under oath, as you know.

Ms. Goldstein, you may proceed.

MS. GOLDSTEIN: Thank you, your Honor.

FURTHER REDIRECT EXAMINATION

BY MS. GOLDSTEIN:

Q. Dr. Abowd, we've met a number of times before. My name is Elena Goldstein, and I'm from the New York Office of the

PAGES 1397 TO 1406

DIONE SUNSHINE HILLYGUS, recalled.

THE COURT: Welcome back, Professor Hillygus. I'll remind you you're still under oath since you're testifying again in the same proceeding.

Ms. Brannon, you may proceed.

MS. BRANNON: Thank you, your Honor.

For the record, I'm Sarah Brannon for the NYIC plaintiffs.

Can we see plaintiffs' demonstrative exhibit PDX-15.

DIRECT EXAMINATION

BY MS. BRANNON:

Q. Dr. Hillygus, do you remember that Dr. Abowd distinguished your citations, as reflected on this slide, about proxy because they were older and did not directly address the citizenship question?

A. Yes.

Q. Do you have a reaction to his testimony?

A. Yes. Had Dr. Abowd read my report, these are just a small number of citations used in forming my opinions. So, for instance, in addition to the Martin 1999, there's a Martin 2007; in addition to the Fay 1989, there's some recent work by Mary Borey and Andrew Keller within the Census Bureau about the quality of proxy respondents. On some of these particular points, there's a terrific bit of analysis from the Census Bureau about the undercount of young children.

MS. BRANNON: Can we see plaintiffs' —

MR. GARDNER: Your Honor, I'm sorry. We object and move to strike that testimony. That was not in response to Dr. Abowd's testimony. Dr. Abowd, as Dr. Hillygus acknowledged, responded to this demonstrative. She's now testifying beyond that demonstrative. That's not proper rebuttal.

THE COURT: All right. Let's allow plaintiffs to make their record. To the extent that you have a motion to strike any of it, for reasons we discussed yesterday, we'll take it up after her testimony, but rather than interrupt question by question, I

think it's better to get it out there and then you can make whatever motion you want.

MR. GARDNER: Thank you, your Honor.

MS. BRANNON: Yes. Can we see Plaintiffs' Exhibit 339.

Q. Is this the document you're referring to?

A. Yes.

Q. If there is some particular testimony you would like to direct us to?

A. Yes.

MS. BRANNON: Can we have a call-out on page 23 of 26.

Q. Can you explain the significance of this to your opinions reflected on slide PDX-15?

A. Yes. So, this is Census Bureau research that confirms the opinion that I put forward separate from the particular citation that Dr. Abowd had criticized, that proxy respondents — that the analysis suggests unknowledgeable or unwilling proxy respondents may be a key factor in the undercount of young children.

Q. Is there another document from 2017?

A. Yes. Again, supporting the conclusions I reached separate from the particular citation that Dr. Abowd criticized, again, from internal census research by Terry *et al.* Jennifer Childs is also one of the —

MS. BRANNON: Can we see Plaintiffs' Exhibit 385.

Q. And is there a particular point that you would like to direct us to in this document?

A. Yes. Again, in support of the conclusion on the slide, separate from the particular citation that Dr. Abowd criticized here, here again, is the same conclusion: "Another cultural issue was respondents' resistance to participating in the census due to concerns about confidentiality, deportation —"

THE COURT: Slow down a little bit.

A. "— and the general trust in government in the Hispanic site. Some proxy respondents resisted the interview by providing data that seemed inaccurate or incomplete just to comply with the interview. The Hispanic site also had a high initial refusal rate, which suggests respondent concern about confidentiality and fear of deportation during the highly charged debate about strong anti-immigration laws at that time."

Q. Why are these citations important to the opinions you've offered in this case?

A. They, again, just offer additional evidence backing up my conclusion that an addition of a citizenship question and the increased use of proxy respondents will contribute to increased omissions of noncitizens and Hispanics.

MS. BRANNON: Can we go back to demonstrative exhibit plaintiffs' 15.

Q. Do you also remember that Dr. Abowd testified about bias in proxies?

A. Yes.

Q. What is your response to his testimony about that topic?

A. So, Dr. Abowd agreed with the conclusion that an addition of a citizenship question will decrease the accuracy of the census count, and the way that he concluded that the accuracy was going to be affected was because of increase in variance. I agree with that opinion, but I am also of the — my opinion is, is that there is sufficient evidence to suggest that an increase in proxy respondents associated with citizenship question will also reduce accuracy because of the direction of some of those inaccuracies; in other words, there will be bias.

Q. And can you think of an example of where this bias can be shown?

A. Well, Dr. Abowd agreed with some of the points already this afternoon in terms of increased omissions, would be one source of bias; that Hispanic respondents are less likely to fully roster, again, is another source of bias in the count. But I think the clearest evidence that we have talked about is the increase in bias associated with the citizenship question itself, a characteristic.

MS. BRANNON: Can we see Plaintiffs' Exhibit PX-162.

Q. And then can you explain why imputation per this call-out of citizenship data is going to be challenging?

A. Yes. So, so the Brown memo is acknowledging that — essentially that the missing-ness on

citizenship will not be ignorable, that it is related to the decision to respond or not. And so if you apply an ignorable assumption in the imputation methods, then you will end up with bias. Again, Dr. Abowd acknowledged that. He concluded that, you know, for the sake of transparency, that the Census Bureau has to use the data that they have, but that doesn't mean that external data doesn't show that, in fact, the missing-ness is nonignorable.

Q. And when you're talking about bias, are you talking about count imputation, character imputation or both?

A. Well, I've given examples now of both. This particular example is about bias in characteristic imputation.

Q. And why is bias in characteristic imputation important in general?

A. I thought that Dr. Abowd did a terrific job of it, of giving some examples of why the characteristics of the census really matter. They form the frame against which every survey conducted in the U.S. is compared. But even more than that, that there are federal funding decisions made on the basis of the characteristics of the population, not just the count of the population.

MS. BRANNON: Can we see plaintiffs' PX-329, and then can we highlight row 15 and 16.

Q. Is this an example of where characteristics are important in federal funding decisions?

A. Yes, and so these particular examples, again, something that was already in the record, are

cases in which the age matters and determines the distribution of federal funding.

Again, I would just highlight that we have focused so much attention on the accuracy of the count, and Dr. Abowd agrees that the addition of a citizenship question is going to reduce the accuracy through increased variance. I've made the case that there's increased variance, but also it found bias. But in terms of characteristic imputation, the Brown memo confirms that there's — there's going to be issues of bias, not just variance.

MS. BRANNON: And just for the record, your Honor, all of the exhibits we referred to are admitted into evidence.

Can we see plaintiffs' demonstrative PDX-11.

Q. Dr. Hillygus, do you remember that Dr. Abowd also testified about this slide, and in particular, about your point 4?

A. Yes, both point 3 and point 4 were ones that Dr. Abowd concluded were inaccurate, and I think we have a call-up just to show where they're —

MS. BRANNON: Sure. Can we see PX-162, footnote 29, which is on page 15 of 7 of the PDF.

Q. Can you explain your opinion and how it relates to this language and slide, as presented?

A. Sure. Both of those points on which Dr. Abowd, you know, said they were incorrect, it is true that they did later analysis in the paper and that those were criticisms for earlier analyses. So, for instance, footnote 29, analysis in later sections

of citizenship paper labeled "initial assumptions" instead treats all persons with missing citizenship values, they are citizens whether they are U.S. — or foreign-born.

And so the key point here is, is that yes, in terms of the 5.8 percentage point, you know, estimate that Dr. Abowd has focused on, that those particular criticisms, you know, apply to other analyses in that paper. But the point is, is that those issues are what led to the particular analysis that is conservative. It's because of those criticisms they had to rely on a different subset of control and treatment groups, and so, again, the conclusion — I know the judge has heard this too much from this particular paper, but the conclusion that the 5.8 is likely too small is, is, I believe, a fair interpretation of their analysis.

Q. Finally, do you have any reaction to Dr. Abowd's testimony about Hispanic nonresponse rates?

A. Yes. So, again, the Census Bureau has provided lots of evidence where they have broken, say, breakoff rates and item nonresponse by Hispanic. But their primary analysis in which they've looked at the impact of the citizenship question was just for noncitizens, and I have — my opinion on the basis of the available empirical analysis is that the impact is likely to be on Hispanics, including Hispanic citizens. And there is compelling evidence of likely impacts from outside of the Census Bureau. It is the best available empirical evidence because the Census Bureau hasn't done the analysis to evaluate the

impact on Hispanic citizens, which, frankly, I'm not sure why they haven't.

Q. Could the Census Bureau have done an evaluation of the impact of the citizenship question on response rates of Hispanic citizens?

MR. GARDNER: Objection. Calls for speculation.

THE COURT: I think it's well within the scope of her expertise. Overruled.

A. I can certainly say that it is my opinion that it is quite puzzling that the Census Bureau did not directly estimate the impact for Hispanic citizens.

MS. BRANNON: Thank you, your Honor. I have no further questions.

THE COURT: Cross-examination.

MR. GARDNER: Josh Gardner.

CROSS-EXAMINATION

BY MR. GARDNER:

Q. Good morning, Dr. Hillygus. I should say good afternoon. We haven't met before, but my name's Josh Gardner with the Department of Justice.

THE COURT: It's 11:58, so it's still morning.

MR. GARDNER: Just beat the cloc'.

THE COURT: All right.

MR. GARDNER: Can we please put up PDX-15.

Q. I believe that's the demonstrative that you were talking about.

Now, Dr. Hillygus, you just testified that Dr. Abowd did not consider all of the sources you relied upon for your opinions about the effect of proxies, correct?

A. Correct.

Q. Because there are sources that you considered that aren't on demonstrative PDX-15, correct?

A. Correct.

Q. But those are sources that you did rely upon in your expert report in this case, correct?

A. Correct.

Q. That you did not discuss during your initial direct testimony earlier in this trial, correct?

A. They formed the basis of the opinions, which I did discuss.

Q. But were not expressly addressed during your initial direct testimony, correct?

A. I want to be a little bit careful, because I know that I talked about some citations during the direct that — but on this particular slide, I'm not sure if I mentioned any other citations, correct.

MR. GARDNER: No further questions, your Honor.

THE COURT: All right.

I assume Dr. Hillygus can step down.

MS. BRANNON: Yes. Dr. Hillygus can step down. Thank you.

THE COURT: You may step down.

Thank you.

(Witness excused)

MR. COLANGELO: Your Honor, plaintiffs would keep the record open not only for the evidentiary issues that the Court is still considering but also for the possible deposition testimony of the secretary in the event that the Justice Department's mandamus petition is denied and the Court's order is allowed to take effect.

THE COURT: All right. I'm prepared to address most

2010 Census Program
for Evaluations and Experiments

November 16, 2012

2010 Census Match Study

U.S. Census Bureau standards and quality process procedures were applied throughout the creation of this report.

FINAL REPORT

* * *

3.2 Record Linkage

The same people and addresses are present in many of the same administrative records data sources. The administrative records files must be unduplicated in order to evaluate them relative to the 2010 Census.[8] Thus, unique address identifiers called master address file identification numbers (MAFIDs) and person identifiers called protected identification keys (PIKs) were assigned to administrative records through the Person Identification Validation System (PVS). To match administrative

[8] The 2010 Census also contains duplicates. Preliminary research that unduplicated the 2010 Census by PIK suggests there were 10.5 million duplicates in the 2010 Census. This is close to the official Census Coverage Measurement figures which suggest there were 8.5 million duplicates in the 2010 Census (Mule 2012). The 2010 Census Match Study report only uses the unduplicated 2010 Census for one analysis, the demographics quality analysis. Duplicates may vary by demographic group, potentially inflating quality of data for some groups while deflating quality for others. Thus, 2010 Census duplicate PIKs were removed from the demographics quality analysis.

records data to the 2010 Census, MAFIDs and PIKs must be on these data sources. The 2010 Census data already had MAFIDs, therefore only PIKs were assigned to the 2010 Census through PVS. For more information on this record linkage system see Wagner and Layne (2012).

The process of assigning address identifiers starts with matching administrative data to an extract from the Census Bureau Master Address File (MAF).[9] MAFIDs were assigned to administrative records with address data that matched to the MAF. The process of assigning PIKs to the 2010 Census and administrative data starts with matching these data to a reference file containing data on individuals.

For the assignment of PIKs, the matching software compared personally identifiable information (PII) from administrative data and the 2010 Census to PII on person reference files. The software has two primary components, and one or both of those components can be utilized depending on the characteristics available in the administrative records and 2010 Census files.

The two components are "verification" and "search." The verification module was used when the source file contained a SSN.[10]

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[9] The 2010 Census Match Study uses a Master Address File extract. For the purposes of the report, this will be referred to as the MAF. The extract used in this analysis may differ from the full Master Address File.

[10] A small number of Individual Tax Identification Numbers (ITINs) were in the reference file when a PIK was assigned to 2010 Census persons. Additionally, ITINs were in the reference file when a PIK was assigned to some of the administrative data sources.

Many federal administrative files contained SSNs, but the 2010 Census and most commercial data did not include SSNs. For these data sets, the search modules in the software compared name, address, and date of birth fields to the person reference file. Administrative and 2010 Census records that matched to the person reference file through either the "verification" or "search" modules were considered validated and were assigned a PIK.

HEARING WITH COMMERCE SECRETARY ROSS

HEARING
BEFORE THE
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
ONE HUNDRED FIFTEENTH CONGRESS
SECOND SESSION

MARCH 22, 2018

Serial No. 115-FC09

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* * *

*Secretary Ross. Well, as I mentioned, if we get an individual request from an individual company that is truly representative of an industry-wide problem, we can deal with it on a broader basis. The powers delegated under the proclamation are quite broad.

As to beverage cans themselves, as you are aware, it is my view that these tariffs, even forgetting the

exclusions and exemptions, will have a trivial effect, a fraction of one penny on a can of Campbell's soup, on a can of Budweiser, on a can of Coca Cola. And it is similarly small increments on many other things.

So that doesn't answer all the problems, but I think we need to put it into perspective. The total metal content of a can is two or three pennies, depending on the can size and the particular material used. So putting a tariff on a portion of that, it really is relatively small in the overall scheme of things.

*Chairman Brady. Thank you, Mr. Meehan. Ms. Chu, you are recognized.

*Ms. Chu. Secretary Ross, I am going to drastically change the topic here, and ask a question that has been asked of my office nearly every day, and that is about the census.

The Census Bureau, of course, is under your purview, but it has been reported that the Department of Commerce is considering asking — adding a citizenship question to the 2020 Census. And there is a lot of fear by immigrant stakeholders that adding this question will create a lot of fear, that many immigrants will fail to respond to the entire questionnaire, fearing that their legal status will come under scrutiny. There are many that argue that the numbers reported from the census will be more inaccurate, and that it will be more difficult to provide benefits and resources for low-income communities who are afraid to be counted.

In fact, I have heard from many entities, including the LA County Board of Supervisors who unanimously wrote to Congress, urging opposition to the inclusion of the citizenship question, highlighting that LA County already faces great challenges in counting minorities, immigrants, and hard-to-survey populations.

And in the 2010 Census, more than 113,000 Latino children in California and 47,000 Latino children in LA County were not counted, according to one survey that was done.

So these inaccuracies make it hard and difficult for our government to administer important federal safety net programs, such as WIC, SNAP, and TANF. Can you tell me whether the Department of Commerce plans to include the citizenship question in the 2020 Census?

*Secretary Ross. Department of Justice, as you know, initiated the request for inclusion of the citizenship question. We have been talking on the phone and received written correspondence from quite a lot of parties on both sides of that question. There are many, many sub-questions about accuracy, about suppression of responses that we are taking into account.

We have not made a final decision as yet, because it is a very important and very complicated question. We will make a decision by March 31st, which is the date on which we are required to report to the Congress the final questions for the 2020 decennial census.

*Ms. Chu. And I understand that this question has not been tested, which is usually the tradition

with the Census Bureau also. I wanted to know whether you have factored in the additional cost of adding this question, this untested question.

*Secretary Ross. The cost is one of the considerations. The comparison with the American Community Survey and annual sampling, which does ask the question, is another consideration. There are probably 15 or 20 different, very complicated issues involved in the request. Because it is from the Department of Justice, we are taking it very seriously, and we will issue a fulsome documentation of whatever conclusion we finally come to.

*Chairman Brady. Thank you. Mr. Secretary and members, we have two minutes left in the first of four votes. This is an important hearing. We will reconvene, Mr. Secretary, immediately after votes. Thank you for your patience.

The committee stands recessed until immediately after votes. [Recess.]

*Chairman Brady. The committee will come to order.

Thank you, Mr. Secretary, for your patience during the vote series. We will resume with the questioning by Mrs. Noem.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

No. 1:18-cv-2921 (JMF)

STATE OF NEW YORK, *et al.*,
Plaintiffs,

—v.—

UNITED STATES DEPARTMENT
OF COMMERCE, *et al.*,
Defendants.

DEFENDANTS' POST-TRIAL PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING PLAINTIFFS' CLAIMS

* * *

321. On February 12, 2018, Commerce and Census Bureau groups, including Secretary Ross himself, met to discuss the Census Bureau's analysis to date. AR 9334-9335.[7] At this meeting,

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[7] AR 9334-9335 is a list of action items drafted by a Census Bureau employee on February 13, 2018, "from yesterday's meeting with the Secretary." AR 9433-943[illegible] (cited

in the next sentence of the paragraph in the text) is an email chain which begins on February 14, 2018, with a discussion of "combined options B and C" and contains a reference by Dr. Abowd to "the elaborations that the Secretary requested." The February 12 meeting is also briefly alluded to in AR 4929, although it is described only as "the meeting on Monday on citizenship." No further notes or minutes of this meeting exist.

Defendants believe that the foregoing documents in the Administrative Record are sufficient to establish the fact and content of the February 12 meeting for the purposes of this Court's review. Although the references to the February 12 meeting do not mention discussion of the application of disclosure avoidance techniques to block level data, as this Court inquired, this information was analyzed by the Census Bureau prior to February 2018 in developing its recommendations and the analysis is in the administrative record. *See* AR7704. It therefore must be presumed that the Secretary constructively considered this information. *See Styrene Info. & Research Center, Inc. v. Sebelius*, 851 F. Supp. 2d 57, 64 (D.D.C. 2012) ("The mere fact that the subgroup drafts were not ultimately passed on to the final decisionmaker does not lead to the conclusion that they were not before the agency."); *Wildearth Guardians v. U.S. Forest Serv.*, 713 F. Supp. 2d 1243, 1260 (D. Colo. 2010) (holding that decisionmakers "constructively considered" deliberations that "so directly served as the basis for the recommendation ultimately passed on to the Assistant Secretary and other relevant decision makers").

As Defendants have maintained throughout this litigation, this Court's review is properly limited to the administrative record, not "some new record made initially in the reviewing court." *Camp v. Pitts*, 411 U.S. 138, 142 (1973). It would therefore be improper for Defendants to create and then submit a document summarizing the meeting, or for the Court to consider extra-record testimony as to the meeting. *See Community for Creative Nonviolence v. Lujan*, 908 F.2d 992, 998 (D.C. Cir. 1990) (rejecting government's affidavit in record review case because it "added nothing–it either duplicated the record and was thus unnecessary or it added to the record and was thus beyond the record"). However, should the Court determine that it is permitted to consider extra-record material in this case, the trial testimony concerning this meeting is summarized in paragraphs 404-408 below.

the Secretary requested that the Census Bureau analyze a fourth alternative, Option D, which would combine Options B and C. AR 1309; AR 9433-9434.

322. The Census Bureau provided two memoranda analyzing Option D on February 23, 2018, and March 1, 2018. AR 1304-1312, 2935-2940, 4713-4721; *see, e.g.*, AR 2180-2198, 4454-4462, 5613-22, 5945-5948, 5967-6155, 6159-6173. In addition, the Census Bureau continued to answer questions posed by the Commerce Department until late March, 2018. *See, e.g.*, AR 2670-2680, 2894-2901, 5577-5581, 5608-5610, 5798-5803, 9370, 9680-9721.

323. The Secretary reviewed over 50 incoming letters and emails from stakeholders, interest groups, Members of Congress, and state and local officials regarding reinstatement of a citizenship question on the 2020 decennial census. AR 1313; *see* AR 775-792, 794-1165, 1176-1193, 1195-1197, 1210-1212, 1217-1220, 1222-1255, 1262-1273; *see also* AR 1768-1771, 3563-3565, 3915- 3917. He also monitored views of the public more generally, as represented in media accounts. AR 1313; *see* AR 666-733. In addition, he personally had conversations on the citizenship question with over 24 diverse, well-informed and interested parties, diligently selected by his staff to represent a broad range of views. AR 1313; *see* AR 1194, 1198-1209, 1213-1216, 1221, 1256-1261, 1274-1276; *see also* AR 1638, 1798, 1807-08, 1815-1816, 2599-2600, 2604, 3491, 8392-8467.

* * *

365. "The Department of Justice is always trying to find the best possible data, whether it's from one source or multiple sources, to analyze jurisdictions for potential Section 2 violations and to bring appropriate Section 2 enforcement actions." Gore Dep. 25:1-14.

366. The Department of Justice investigates hundreds of Section 2 matters, and not all investigations result in the filing of a complaint in district court. Tr. 853:9-15.

367. "[H]aving the most complete and accurate data regarding citizenship rates that the Census Bureau could provide would allow [DOJ] to fulfill its commitment to robustly enforcing the Voting Rights Act." Gore Dep. 26:8-13.

368. It is the position of the Department of Justice that the decennial census questionnaire is the most appropriate vehicle for collecting CVAP data for purposes of VRA enforcement. Gore Dep. 169:22-170:5

369. Mr. Gore stated that CVAP data collected through the census questionnaire is not necessary for DOJ's VRA enforcement efforts. Gore Dep. 300:5-11. However, Mr. Gore is not himself a statistician and has no experience drawing districts or using census block-group-level data to estimate block-level data. Gore Dep. 17:21-18:14, 167:14-19. The Census Bureau is therefore better situated than he is to determine the accuracy of various forms of CVAP data. Gore Dep. 39:16-40:3.

370. Because of the way that the three prongs of *Gingles* have been interpreted by some appellate courts, it is necessary to have CVAP data for Hispanics. Tr. 844:1-3.

371. Some appellate courts have determined that CVAP data at the block level is necessary to determine if Hispanics meet the first prong of *Gingles*. Tr. 844:4-12; Tr. 844:22-845:1.

372. The P.L. 94-171 data does not have the kind of standard errors associated with an estimate based on a statistical sample. Tr. 49:16-50:1 (Rule 30(b)(6)). The P.L. 94-171 data file does not have sampling margins of error. PX-297 at 41 (response to Census RFA No. 130).

373. In contrast, the tabulation of CVAP data does contain sampling errors. Tr. 50:3-5 (Rule 30(b)(6)).

374. The Census Bureau has not made a decision on the way in which it will aggregate the data to the block level for the CVAP table as a public use product, which would be available to the Department of Justice. Tr. 55:5-20 (Rule 30(b)(6)). Nor has the Census Bureau decided whether the block-level CVAP data will be included in the P.L. 94-171 data file. Tr. 56:15-18 (Rule 30(b)(6)).

375. Although the Census Bureau believes that administrative data would be the best way to provide block-level CVAP data, it has yet to acquire a linked file of administrative data. PX-297 at 36-37 (response to Census RFA No. 113).

376. The Census Bureau's request for a meeting with DOJ was discussed internally within DOJ. Gore Dep. 265:12-22; 268:20-269:3. The Attorney General ultimately determined not to pursue the meeting with the Census Bureau. Gore Dep. 271:21-272:6, 274:5-9.